

Exhibit “9”

Transcript of the Testimony of

Lisa M. McNally

September 10, 2014

Butler v. American Family

No. 3:14-cv-05305 RBL



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFF BUTLER, individually and as)
the representative of all persons)
similarly situated,)

Plaintiffs,) No. 3:14-cv-05305 RBL

vs.)

AMERICAN FAMILY MUTUAL INSURANCE)
COMPANY and AMERICAN STANDARD)
INSURANCE COMPANY OF WISCONSIN,)
foreign insurers,)

Defendants.)

DEPOSITION OF LISA M. MCNALLY
September 10th, 2014
Seattle, Washington

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EXHIBIT INDEX

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11 Exhibit No. 1 2-page notice of deposition dated 6
9/8/2014
12 Exhibit No. 2 2-page document entitled, 16
13 "Interrogatories #6, 7, Requests
#8, 9," AMFAM MM001716 through
14 MM001717
15 Exhibit No. 3 1-page double-sided document 18
16 entitled, "Diminished Value
Checklist," AMFAM_MM002745
17 through AMFAM_MM002744
18 Exhibit No. 4 1-page double-sided document 50
19 entitled, "Release of All Property
Damage Claims, to Linda Walsh from
20 Matthew R. Foley, AMFAM_MM002746
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21 Exhibit No. 5 1-page double-sided Audatex 52
22 document entitled, "Loss of Value,"
AMFAM_002748 through AMFAM_002749
23 Exhibit No. 6 1-page document entitled, 62
24 "Diminished Value Schedule,"
AMFAM_002750
25 Exhibit No. 7 1-page letter from William R. 62
McCoy dated 7/29/2011, AMFAM_002751

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1 APPEARANCES

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19 Also present: William G. Rasche, American Family
20 Insurance
21
22
23
24
25

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1 EXHIBIT INDEX (Continuing)

2 EXHIBIT NO. DESCRIPTION PAGE NO.
3 Exhibit No. 8 1-page double-sided letter from 63
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4 AMFAM_002774 through AMFAM_002773
5 Exhibit No. 9 1-page letter to Christina Bower 64
from Lisa McNally dated 8/26/2011,
6 AMFAM_B000087
7 Exhibit No. 10 20-page letter to Erling Jackson 64
from Christina Bower dated
8 8/5/2011, AMFAM_B000088 through
AMFAM_000107
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10 Exhibit No. 11 1-page letter to Brandon M. 65
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7/30/2010, AMFAM_MM000812
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12 Exhibit No. 12 1-page document entitled, 80
"View Vehicle," AMFAM_B000012
13 Exhibit No. 13 1-page double-sided document 94
entitled, "Diminution of Value
14 Worksheet," AMFAM_MM002775
through AMFAM_MM002776
15
16 Exhibit No. 14 1-page document entitled, 101
"FYI - Note(s) Added,"
AMFAM_B000010
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18 Exhibit No. 15 1-page letter to Christina D. 102
Bower from Erling G. Jackson
dated 8/8/2011, AMFAM_B000024
19
20 Exhibit No. 16 25-page affidavit dated 133
8/12/2014, POLICY_M000001
through POLICY_M000025
21
22 Exhibit No. 17 1-page financial summary & 137
transaction prepared 3/19/2014,
AMFAM_B000111
23
24 Exhibit No. 18 17-page document entitled, 139
"Print Notes for 00-331-036580,"
AMFAM_B000112 through
25 AMFAM_B000128

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1 (Pages 1 to 4)

<p>1 EXHIBIT INDEX (Continuing)</p> <p>2 EXHIBIT NO. DESCRIPTION PAGE NO.</p> <p>3 Exhibit No. 19 14-page document entitled, 156</p> <p>4 "Print Notes for 00-185-054775,"</p> <p>5 AMFAM_M000045 to AMFAM_M000058</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 5</p>	<p>1 person who interacted on the diminished value claim of Ms.</p> <p>2 Bower; is that correct?</p> <p>3 A Correct.</p> <p>4 Q Okay. And I also noticed that you had some interaction</p> <p>5 regarding the -- the diminished value claim with Mr.</p> <p>6 Meyer as well?</p> <p>7 A No, that is not correct.</p> <p>8 Q Okay. I noticed your name; you were copied on some of</p> <p>9 the e-mails in the contacts. And another person</p> <p>10 handled -- appears to be the primary person, but you were</p> <p>11 listed as the supervisor for that person. In the log,</p> <p>12 there's a Jennifer O'Malley who handled it, and you are</p> <p>13 listed as being her manager.</p> <p>14 A I am Jennifer O'Malley's manager; however, she does not</p> <p>15 handle diminished value claims.</p> <p>16 Q Okay. Okay. So who has handled the diminished value</p> <p>17 portion then of Bruce Meyer's claim?</p> <p>18 A I'm unsure.</p> <p>19 Q You're unsure?</p> <p>20 A I have not reviewed that file.</p> <p>21 Q Okay. Okay. Well, the reason why I ask the questions</p> <p>22 and I'll want to find out what your knowledge is, is</p> <p>23 because several times you respond to e-mails from</p> <p>24 Jennifer O'Malley about what to do on the claim, so --</p> <p>25 A If I can see the e-mails, I --</p> <p style="text-align: right;">Page 7</p>
<p>1 BE IT REMEMBERED that on Wednesday,</p> <p>2 September 10th, 2014, at 888 SW Fifth Avenue, Suite 700,</p> <p>3 Seattle, Washington, at 10:07 a.m., before Laura L.</p> <p>4 Ohman, Certified Court Reporter, CCR, appeared LISA M.</p> <p>5 MCNALLY, the witness herein;</p> <p>6 WHEREUPON, the following proceedings</p> <p>7 were had, to wit:</p> <p>8</p> <p>9 <<<<<< >>>>>></p> <p>10</p> <p>11 LISA M. MCNALLY, having been first duly sworn by the</p> <p>12 Certified Court Reporter, testified</p> <p>13 as follows:</p> <p>14</p> <p>15 (Exhibit No. 1 marked for</p> <p>16 identification.)</p> <p>17</p> <p>18 EXAMINATION</p> <p>19 BY MR. HANSEN:</p> <p>20 Q Ms. McNally, thank you for coming here today. I've just</p> <p>21 marked as Exhibit 1 for the record a copy of the notice</p> <p>22 of the deposition.</p> <p>23 We've asked for your deposition because you were</p> <p>24 listed as a witness with knowledge but also because it</p> <p>25 appears from the documents that you were the primary</p> <p style="text-align: right;">Page 6</p>	<p>1 Q I'll show it to you when we get there. I just want to</p> <p>2 find out what your state of knowledge is.</p> <p>3 When you handled the diminished value portions of</p> <p>4 Ms. Bower's claim, were you a manager at the time or were</p> <p>5 you a line adjuster?</p> <p>6 A I was an adjuster.</p> <p>7 Q Okay. And when did you get promoted to a manager?</p> <p>8 A In January of 2012.</p> <p>9 Q Congratulations.</p> <p>10 A Thank you.</p> <p>11 Q And how long were you with Am Fam before you were</p> <p>12 promoted to a manager in January of 2012?</p> <p>13 A I started with American Family in December of 2009.</p> <p>14 Q And you started as a physical property damage adjuster?</p> <p>15 A Physical damage adjuster.</p> <p>16 Q Okay. Now, as a physical damage adjuster, do you</p> <p>17 determine liability issues on claims?</p> <p>18 A No.</p> <p>19 Q Okay. And if a claim -- and there's a question about</p> <p>20 whether it is to be categorized when it comes in as</p> <p>21 comprehensive or collision or, instead, as a UIM claim.</p> <p>22 Do you make that distinction, or does somebody else?</p> <p>23 A We have the ability to make some of the determinations</p> <p>24 and also we're expected to look for damages to ensure</p> <p>25 that they're consistent with the facts of loss, but then</p> <p style="text-align: right;">Page 8</p>

1 we do collaborate with the casualty adjuster, who does
 2 have the final decision.
 3 Q Okay. Would it be fair if I said that if the case is a
 4 clear case where it's a UIM, then you just make the
 5 decision and you involve the casualty adjusters if
 6 there's some question in your mind?
 7 A That's fair.
 8 Q Okay. So if you have a situation where you've got a
 9 police report and the police report says somebody is
 10 uninsured and you run the VIN and don't find any
 11 insurance, then you just treat it as a UIM?
 12 A We're not able to run the VINs to determine if there's
 13 insurance in Washington.
 14 Q Okay. You send a letter to the person asking if they
 15 have insurance?
 16 A We do not. The casualty insurance does.
 17 Q What would be the circumstances where you would make a
 18 decision on your own; the facts were so clear that you
 19 would consider a UIM claim without some investigation by
 20 the casualty adjuster?
 21 A On a hit and run.
 22 Q Oh, okay.
 23 Now, before starting with Am Fam in December of
 24 2009, did you work for any other insurance company before
 25 that?

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1 A I did.
 2 Q And who was that?
 3 A I worked for Progressive Insurance.
 4 Q And what period did you work for them?
 5 A July 2002 until December of 2009.
 6 Q So you worked for them from -- roughly for seven years,
 7 July 2002 to July 2009?
 8 A No. It was December 2009.
 9 Q Oh, December. Sorry, I misheard.
 10 Okay. And you were an auto physical damage adjuster
 11 for them?
 12 A By the end of my career, I was a supervisor with
 13 Progressive.
 14 Q You were a supervisor of auto physical damage?
 15 A Correct.
 16 Q Okay. And when you came to Am Fam, you were not a
 17 supervisor; you were a line adjuster?
 18 A I was an adjuster once I was hired as a senior adjuster.
 19 Q Okay. Is there some reason why you left Progressive then
 20 as a supervisor and came to Am Fam as a senior adjuster?
 21 A Uh-huh, there is.
 22 Q What was that reason?
 23 A For opportunities to promote higher than a supervisor
 24 would.
 25 Q Okay. Did you take a pay cut when you made that change?

Page 10

1 A No.
 2 Q Okay. Now, before you worked for Progressive starting in
 3 July 2002, what did you do?
 4 A I was in college.
 5 Q Where at?
 6 A Pacific Lutheran University.
 7 Q I know where PLU is.
 8 And what's your degree in?
 9 A I have a business degree.
 10 Q Okay. Where did you go to high school?
 11 A Wahkiakum High School.
 12 Q Do you have any work experience ever working in the body
 13 shop industry?
 14 A I do not.
 15 Q Okay. Now, after you got your BA in business at PLU,
 16 have you had any training in auto adjusting?
 17 A Yes.
 18 Q And what? Just a summary of what kind of training you've
 19 had.
 20 A When I was hired at Progressive, I went through their --
 21 their in-house training programs. I have also attended a
 22 couple of I-CAR classes.
 23 Q Anything else?
 24 A There may be other classes that I've taken that I just
 25 can't think of.

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1 Q Okay. What I-CAR classes did you take?
 2 A I took a Chief frame class that I can recall because that
 3 was the most recent one. After that, I would have to --
 4 I would have to go back and look.
 5 Q And Chief is a frame repair system, right?
 6 A It is.
 7 Q Okay. So it's a course on how that frame repair system
 8 works?
 9 A It was, yes.
 10 Q Okay.
 11 A It included other aspects of it, but yes.
 12 Q Okay. And how many hours is that -- is an I-CAR course?
 13 A I don't remember how many hours that was.
 14 Q An hour or two or --
 15 A No. I -- it was over a period of several days.
 16 Q Okay. And why did you take the course on -- on the Chief
 17 frame machine from I-CAR?
 18 A To continue my education.
 19 Q What did you believe that you'd gain from that?
 20 A Just a better understanding of the framing machine. That
 21 was the purpose.
 22 Q Now, have you ever received any specialized training or
 23 any training at all on the issue of diminished value?
 24 A No.
 25 Q Okay. And I take it you've not received any training

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3 (Pages 9 to 12)

1 from Am Fam on diminished value training; is that fair?
 2 **A That's correct.**
 3 Q Do you have any experience in doing market valuations of
 4 automobiles?
 5 **A Are you referencing total losses?**
 6 Q I'm referencing any training you've gotten on how to
 7 value market losses of vehicles.
 8 **A Autosource is who we do our total loss valuations**
 9 **through, and it would have been training put on by**
 10 **Autosource.**
 11 Q Okay. But you've never taken any courses or education or
 12 anything on -- on determining market value of a
 13 particular vehicle other than what was put on by these
 14 vendors to use their software?
 15 **A That is correct.**
 16 Q Okay.
 17 **A It was how to use their software.**
 18 Q Does Am Fam have any training that you're aware of on the
 19 issue that they provide people on how to value market
 20 values of vehicles other than the training that's put on
 21 by their vendors, Autosource and Audadex?
 22 **A I'm not aware of any training that's offered.**
 23 Q And are you aware of any training that Am Fam offers on
 24 how to adjust diminished value losses?
 25 **A I'm not aware of any training that's offered on**

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1 **diminished value.**
 2 Q Okay. And I've used the term diminished value.
 3 Obviously, you've addressed it and used the term yourself
 4 in the documents, but what understanding do you have of
 5 what diminished value is?
 6 **A It can either be a loss of value as a result of a stigma**
 7 **because the vehicle has been in an accident or it can**
 8 **also be due to a possible residual metal -- loss in the**
 9 **integrity of the metal.**
 10 Q Okay. Where does that understanding come from?
 11 **A Working insurance claims --**
 12 Q Okay.
 13 **A -- and being in body shops and being part of the**
 14 **industry.**
 15 Q Okay. Because I -- I don't see the word stigma in
 16 anything that you've written in any of these files.
 17 **A Stigma. Another word would be "inherent," which is**
 18 **commonly used.**
 19 Q So if you used the word "inherent" in the documents, you
 20 mean "stigma" by "inherent"?
 21 **A Yes.**
 22 Q Okay.
 23 **A I do use the word "stigma" for "inherent."**
 24 Q Okay. Just not on Ms. Bower's claim, right?
 25 **A It's possible I didn't.**

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1 Q Okay. Now, is diminished value, is that a -- is that a
 2 loss in market value?
 3 **A Yes.**
 4 MR. BENNETT: I would just object to
 5 the extent it calls for a legal conclusion.
 6 Q (By Mr. Nealey) When was the first time that you
 7 addressed a diminished value claim that you can remember?
 8 **A I've handled -- excuse me. I've handled them throughout**
 9 **my entire career at American Family. I have handled them**
 10 **at Progressive as well. As far as when that was, I -- I**
 11 **don't recall. It was very early on in my career, not**
 12 **towards the latter half.**
 13 Q (By Mr. Nealey) Okay. Now, have you handled anything
 14 other than UIM and liability diminished value claims when
 15 you were at Am Fam?
 16 **A I'm not aware of any other types of diminished value**
 17 **claims.**
 18 Q Okay. I'm going to show you a document that was provided
 19 in an earlier case in two thousand -- I think these were
 20 provided in 2011. And I'm going to mark it as Exhibit 2.
 21 And it's a list of individuals who are, quote,
 22 "diminished value experts per office." And I'll show you
 23 the second page of it, which is listed as Bates No.
 24 M-1717, and Bryce -- Bryce Hilden is listed there as a --
 25 as an in-house expert.

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1 Is Mr. Hilden -- is he the person within your office
 2 in Washington who is sort of your in-house expert on
 3 diminished value?
 4 (Exhibit No. 2 marked for
 5 identification.)
 6
 7 THE WITNESS: I was unaware that we
 8 had an in house expert on diminished value.
 9 Q (By Mr. Nealey) Okay. Well, I noticed when you
 10 roundtabled Ms. Bower's claim that he was one of the two
 11 people that was there.
 12 Was there a reason he was there?
 13 **A He was my supervisor.**
 14 Q Okay. Okay. But you don't understand him to have any
 15 special knowledge on diminished value that would be
 16 different than, say, what you would have?
 17 **A Not that I'm aware of.**
 18 Q Okay. So his involvement in this claim was not that he
 19 was an in-house expert but that he was your supervisor --
 20 **A Correct.**
 21 Q -- at the time?
 22 **A That is correct.**
 23 Q Okay. He's not your supervisor?
 24 **A He is my peer now.**
 25 Q He is your peer. That's what I thought.

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4 (Pages 13 to 16)

1 He's a manager?
 2 **A He is.**
 3 **Q** And you're a manager now?
 4 **A Correct.**
 5 **Q** Okay. Now, do you have any -- any written guidance that
 6 you've been given on how to handled diminished value
 7 claims in the State of Washington by Am Fam?
 8 **A I have never received anything.**
 9 **Q** Okay. Now, there were some documents that were provided
 10 earlier, and I'm going to mark a couple of them and just
 11 ask you about them so that we can -- let me back up a
 12 moment.
 13 Do you have a set of form letters that you've been
 14 given that you can use for purposed of diminished value
 15 cases that are available to you?
 16 **A Are you referencing a specific letter?**
 17 **Q** I'm asking if you have some template letters or some form
 18 letters that you have on your system that you're allowed
 19 or have been told you can look at and use for diminished
 20 value cases?
 21 **A There is a letter that outlines information that we**
 22 **request from the customer, but yes, that would be**
 23 **considered a form letter.**
 24 **Q** Okay. Let me ask you a couple of these then, and I'll
 25 pull them out and mark them.

Page 17

1 **A Uh-huh.**
 2 **Q** There is, first of all, a -- a document, which is
 3 entitled -- which is Bates-stamped MM-2745. And I'm
 4 going to -- and it was produced as to the State of
 5 Washington, and I'm going to ask you about M-745.
 6 What is this?
 7 **A This is --**
 8 **Q** Let me mark it as Exhibit 3 so my records are straight.
 9 (Exhibit No. 3 marked for
 10 identification.)
 11
 12 **MR. BENNETT:** I don't think you put
 13 the 2 on there.
 14 **MR. NEALEY:** And I'm going to mark
 15 it --
 16 **MR. BENNETT:** Okay.
 17 **MR. NEALEY:** There's the 2. There you
 18 go.
 19 **Q** (By Mr. Nealey) What is Exhibit 3?
 20 **A This is a checklist as -- for diminished value claims.**
 21 **Q** Okay. And this was something that was prepared by Am
 22 Fam?
 23 **A I believe this is potentially an in-house thing. I do**
 24 **not know who prepared it. It's just a checklist that**
 25 **people can utilize if they wish to use. It's not**

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1 **required to use.**
 2 **Q** Okay. Has this been around since you've started with Am
 3 Fam in December of 2009?
 4 **A Yes.**
 5 **Q** Okay. And was it around a couple of years before that to
 6 your knowledge?
 7 **A I do not know.**
 8 **Q** Okay. But certainly since December 2009, this checklist
 9 has been available and in your -- it's contained on your
 10 computer system?
 11 **A Probably not in December, but potentially in January, any**
 12 **time after that.**
 13 **Q** Okay.
 14 **A I don't know when it was on my -- when it was e-mailed to**
 15 **me.**
 16 **Q** Okay. Okay. And -- and is this a checklist which is
 17 designed to be given to your insureds, or is this an
 18 internal document only?
 19 **A Internal.**
 20 **Q** Okay. Now, I'd like to ask you about what these are.
 21 Now, this, of course, dates a lost of 2008 on here,
 22 so we can assume since this exemplar is from 2008 that
 23 the form was in use at least in 2008, right?
 24 **A I don't believe the adjuster listed here was actually**
 25 **with the company in 2008.**

Page 19

1 **Q** Okay.
 2 **A So I'm not sure if this is an error or not.**
 3 **Q** Well, if we have -- then let me ask a more fundamental
 4 question here.
 5 If I'm looking at document -- Exhibit 3, Document
 6 M-2745, it lists a date of loss of 11/24/2008, but it, I
 7 guess, appears to be that this has a date of 7/28/2011 at
 8 the top.
 9 **A Which is when this would have been filled out.**
 10 **Q** And I take it then that you can be in a situation with a
 11 UIM claim where an insured can come back and seek further
 12 compensation under the policy up until the point where
 13 the statute of limitation runs, right?
 14 **A Yes.**
 15 **Q** And the statute of limitations would be six years for
 16 breach of contract in the State of Washington?
 17 **MR. BENNETT:** I'll object to the
 18 extent it calls for a legal conclusion.
 19 **Q** (By Mr. Nealey) What have you been trained on that?
 20 **A There's a three-year statute for the customer to file a**
 21 **claim with us --**
 22 **Q** Okay.
 23 **A -- property damage.**
 24 **Q** Okay. So within -- within Am Fam, you expect to -- to
 25 get a claim within three years?

Page 20

5 (Pages 17 to 20)

1 **A File a claim within three years.**
 2 Q File a claim within three years.
 3 Well, what do you do if somebody comes back to you
 4 and they -- they say -- four years later, they say to
 5 you, "Gee, I've got some further damage on my vehicle
 6 that wasn't repaired and I'd like that loss covered from
 7 that accident"? What do you say to them?
 8 **A If there was a claim filed previous to the statute, then**
 9 **we will address it.**
 10 Q Okay. Is there a limit as to how long you'll address it
 11 if the claim was originally filed within three years of
 12 the date of loss?
 13 **A I haven't run into that particular situation. We have**
 14 **had that happen where claims have come after the statute**
 15 **and we have covered it.**
 16 Q Okay. Now, let me see if I understand.
 17 So the three years is actually just them telling you
 18 they have a loss, right?
 19 **A To make their claim.**
 20 Q Okay. Well, let me give you a hypothetical: This exact
 21 situation, let's assume you did the physical repair of
 22 the vehicle back at the time of the loss, which here
 23 would be 11/24/2008, if somebody comes in four years
 24 later and says, "Gee, I've had a diminished value loss on
 25 my vehicle and I'd like that covered since it" -- "as a

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1 result of the original accident under my UIM coverage,"
 2 what would Pem -- what would Am Fam say if it's four
 3 years later that that's presented to you?
 4 MR. BENNETT: Object to the form of
 5 the question. She's not here as Am Fam's designated rep,
 6 so it would be her knowledge only.
 7 MR. NEALEY: Yeah.
 8 Q (By Mr. Nealey) How do you handle that?
 9 **A We would address it.**
 10 Q Okay. Now, and here there is a note for the statute of
 11 limitations is listed, and that's the three years that
 12 you stated right there?
 13 **A Yes.**
 14 Q Okay. Do you know if that's the three-year statute of
 15 limitations because that's Washington law, or is that
 16 what you understand the policy to require?
 17 **A It's Washington law --**
 18 Q Okay.
 19 **A -- on property damage.**
 20 Q Okay. Now, you want the year and -- and make and model
 21 of the vehicle, right? That's one of the things?
 22 **A It asks for it.**
 23 Q Okay. Now, does the form also ask for the mileage?
 24 **A I do see it on here.**
 25 Q Okay. What's the purpose of knowing the mileage?

Page 22

1 **A To know how many hours were on it at the time of the**
 2 **vehicle -- time of the accident, as mileage can impact**
 3 **the value as well.**
 4 Q Okay. Okay. Meaning that if a vehicle had, say, 100,000
 5 miles on it, you're not going to be likely to view there
 6 to be much, if any, diminished value; is that correct?
 7 **A It depends on the circumstances.**
 8 Q Okay. Well, if you've got a normal car, not a classic
 9 collectible of some sort, but a normal --
 10 **A It depends on the circumstances.**
 11 Q Okay. But, generally, vehicles with high mileage on
 12 them, you're going to treat the diminished value claim a
 13 lot less seriously?
 14 **A No, that's not true.**
 15 Q No?
 16 Okay. So if I've got the same 2005 Honda that's
 17 listed here with a date of loss of 2008, if the Honda had
 18 10,000 miles on it at the time of the accident as opposed
 19 to 90,000 miles, would that impact your decision on that
 20 claim?
 21 **A It depends on the circumstances surrounding the claim.**
 22 Q Okay.
 23 **A We treat every diminished value claim on its own merits.**
 24 Q Okay. And then you put the estimate amount.
 25 What's the -- what's the reason why you have the

Page 23

1 estimate amount?
 2 **A To give an idea of what the cost of the repairs were at**
 3 **the time of the accident.**
 4 Q What does that have to do with diminished value?
 5 **A It -- it could impact if there's a diminished value claim**
 6 **or not. If it's a larger impact, there's a potential for**
 7 **a more diminished value since there's more loss. It's**
 8 **also situational.**
 9 Q So if I'm understanding what you're saying, the more --
 10 the higher cost of repair, the likelihood is that there
 11 would be more diminished value as opposed to a lower cost
 12 to repair?
 13 MR. BENNETT: Object to the form.
 14 THE WITNESS: No. That's not what I
 15 said. There's a potential that there could be, but
 16 there's a potential that there could be diminished value
 17 of a small repair. Again, each one is on its own
 18 individual merits.
 19 Q (By Mr. Nealey) Okay. Well, then why -- why do you have
 20 the amount of the -- why does the form that you have ask
 21 for the -- the total amount of the estimate to repair?
 22 **A This form is just a summary of what occurred on the**
 23 **vehicle.**
 24 Q Well, does this form include irrelevant things to the
 25 consideration? Is this relevant or not relevant?

Page 24

6 (Pages 21 to 24)

1 **A It's not required for use.**
 2 Q Well, would you ever make a diminished value decision in
 3 your work with Am Fam and not consider the cost of repair
 4 on the vehicle?
 5 **A Yes.**
 6 Q What would be the circumstances that you wouldn't
 7 consider the cost of repair of the vehicle when deciding
 8 whether there was diminished value or not?
 9 **A The type of vehicle.**
 10 Q What type of type would you --
 11 **A A specialty-type vehicle, a high-dollar vehicle that's in**
 12 **a specialty market or a classic vehicle, leased vehicles**
 13 **as well.**
 14 Q Are there others?
 15 **A I'm sure there's others. I just can't think of it.**
 16 Q So if you had a leased vehicle, you would not consider
 17 the amount of repair cost on the vehicle in determining
 18 diminished value; is that correct?
 19 **A It depends.**
 20 Q Well, would you reject a claim for diminished value if
 21 somebody had a leased vehicle on the fact that it was
 22 leased?
 23 **A It would need to be the leasing company that makes the**
 24 **claim.**
 25 Q Okay. So you would be in agreement with me that unless

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1 it's the lessor -- the leasing company, the actual owner
 2 of the vehicle, if somebody who has a leased or rented
 3 vehicle presents a diminished value claim, you would
 4 reject it on the grounds that it was a leased or rental
 5 vehicle, correct?
 6 **A It depends on the terms of the lease.**
 7 Q Okay. Okay. So to put it another way, if you have a
 8 leased vehicle or a rented vehicle, you don't even get to
 9 consideration of the extensiveness of damage because you
 10 can reject it on the grounds that it's a leased or rented
 11 vehicle, correct?
 12 MR. BENNETT: Object to the form.
 13 THE WITNESS: No. There have been
 14 circumstances where diminished value claims have been
 15 paid based on the contractual obligation on the lease.
 16 And that's between the leasing company, the renter, and
 17 the insurance company.
 18 Q (By Mr. Nealey) Okay. But that's only on some proof of
 19 the fact that the party before you making a claim under
 20 the policy, your insured, is going to incur some
 21 obligation; is that correct?
 22 **A I'm sorry. I don't understand --**
 23 Q Okay.
 24 **A -- your question.**
 25 Q If I understand, unless your insured, okay --

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1 **A Okay.**
 2 Q -- who has leased the vehicle or rented the vehicle,
 3 unless they can show you that they have some contractual
 4 obligation to pay for the damages in diminished value to
 5 the person from whom they rented the vehicle or leased
 6 the vehicle, unless they show that to you, you just
 7 reject those claims?
 8 **A That would be a first-party claim. That is different**
 9 **than a third-party claim.**
 10 Q Okay. Well, if we're talking uninsured motorist. We're
 11 talking somebody who makes a UIM claim under their policy
 12 and they have a leased or rental vehicle that they're
 13 making it under and they don't present some evidence to
 14 you that they are going to end up having to pay for
 15 diminished value to the person from whom they leased the
 16 vehicle or from whom they rented the vehicle, you will
 17 reject that claim under UIM?
 18 **A We will investigate the claim before we make our**
 19 **decision.**
 20 Q Okay. But if you find they can't demonstrate some
 21 contractual obligation to cover diminished value from the
 22 person from whom they leased the vehicle or rented the
 23 vehicle, then you would deny it on that basis, right?
 24 **A Again, it's hypothetical. It would depend on a specific**
 25 **situation.**

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1 Q Okay. Now, you also mentioned the fact that you might
 2 not consider the amount of repairs on a classic vehicle.
 3 Why would that be?
 4 **A Some vehicles have appraisals on them where they've been**
 5 **deemed a classic vehicle and there are show cars.**
 6 **There's various reasons.**
 7 Q Okay. And you mentioned specialty vehicles.
 8 What do you mean by specialty vehicles?
 9 **A More of a Lamborghini-type vehicle, very high-dollar**
 10 **performance vehicles.**
 11 Q Okay. And on those vehicles, you would consider
 12 diminished value without looking at the actual cost to
 13 repair the vehicle?
 14 **A We always look at it. Whether or not that's the final,**
 15 **that's a determination, so it's different.**
 16 Q And then you mentioned high-dollar value vehicles.
 17 What do you mean by high-dollar value vehicles?
 18 **A I would put that in the same category as specialty**
 19 **vehicles, the ones I just described.**
 20 Q Okay. What would you consider a, you know, BMW 540?
 21 **A It depends on what year it is.**
 22 Q Do you have a cutoff for what you're talking about,
 23 high-dollar value vehicles?
 24 **A No.**
 25 Q Okay. Now, then you look at the damage location.

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7 (Pages 25 to 28)

1 What's the purpose of that on the form?
 2 **A Just to get an idea of where the impact was on the**
 3 **vehicle. Again, this is just a summary of the scope of**
 4 **the damage.**
 5 Q Okay. And then you have a question "structural damage,"
 6 yes, no, and where.
 7 What's the reason for that?
 8 **A So that we recognize if there was structural damage to**
 9 **the vehicle or not.**
 10 Q What do you consider structural damage?
 11 **A The interior of the body of the vehicle such as the body**
 12 **panel, the frame rails, the radiator support, anything**
 13 **that's basically the support of the vehicle.**
 14 Q Okay. Are you familiar with the -- any DA -- the NADA
 15 disclosure guidelines for structural and frame work?
 16 **A Not the specific guidelines.**
 17 Q Okay. But your understanding of the structural damage
 18 would be the frames, the unibody structure of the
 19 vehicle, the core support?
 20 **A That's correct.**
 21 Q Okay. And whether a car has structural damage or not is
 22 something that Am Fam considers when it determines
 23 whether it thinks there's diminished value on a vehicle,
 24 correct?
 25 **A It is one of the things we take into consideration.**

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1 Q Okay. And then it says -- you have "yes, Floor and Rear
 2 Frame."
 3 What's the -- what does that mean?
 4 **A It looks like it was filled out that yes, there was**
 5 **structural damage, and it was to the floor and the rear**
 6 **frame.**
 7 Q Okay. You're right. Now I understand.
 8 Now, then we get to repair location and leased
 9 vehicle. That's the question we talked about earlier.
 10 **A Uh-huh.**
 11 Q Okay. Now, and then you have "OEM/LKQ/AM Parts Used?"
 12 What is that about?
 13 **A To know what type of parts were put on the vehicle. Were**
 14 **they manufactured parts? Were they used manufactured**
 15 **parts? Or were they new aftermarket parts?**
 16 Q What does that have to do with diminished value?
 17 **A To get an idea of what parts were utilized, as some**
 18 **people feel that could impact the value of a vehicle.**
 19 Q Okay. And, obviously, if you had a vehicle that was
 20 in -- had parts that had come from the factory and you
 21 put aftermarket parts not made by the original
 22 manufacturer, then that car is not back in its
 23 pre-accident condition, correct?
 24 MR. BENNETT: Object to form; calls
 25 for a legal conclusion.

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1 THE WITNESS: If it's an undamaged
 2 vehicle with quality certified parts on it, it's back to
 3 its pre-loss condition.
 4 Q (By Mr. Nealey) So you believe if you take aftermarket
 5 parts not made by the original manufacturer and you put
 6 them on a car in place of factory parts, that it's in its
 7 pre-loss condition?
 8 **A If the part has the correct look and finish and it's a**
 9 **certified part, it could be back to pre-loss condition.**
 10 Q So you consider pre-loss condition to be that the vehicle
 11 was back to its look, fit, and finish?
 12 **A As part of that.**
 13 Q Okay. Is there anything else to pre-loss condition, in
 14 your mind, than to put something back in pre-loss
 15 condition other than it has the same look, fit, and
 16 finish?
 17 **A To restore the vehicle as close to the original factory**
 18 **specifications as possible.**
 19 Q Okay. So if I'm understanding your view of pre-loss
 20 condition is that you restore the vehicle as close as
 21 possible to the OEM specifications --
 22 MR. BENNETT: Objection.
 23 Q (By Mr. Nealey) -- and that it have the same -- scratch
 24 that.
 25 So if I'm understanding, you're saying that in your

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1 work, you view pre-loss condition is to restore the
 2 vehicle as close as possible to its OEM specifications
 3 and they have a similar look, fit, and finish --
 4 MR. BENNETT: Object to form.
 5 Q (By Mr. Nealey) -- is that correct?
 6 MR. BENNETT: Object to form.
 7 THE WITNESS: I would use that as part
 8 of my definition. If I were to expand on it, I would
 9 need time to think of my exact definition on it, but...
 10 (Pause.)
 11 Q (By Mr. Nealey) Okay. Well, I don't want to -- if
 12 that's part of your definition, that's fine, but sitting
 13 here today, is there anything else you view that is
 14 necessary to be done on a vehicle, in your opinion, for
 15 it to be in its pre-loss condition, the way you're using
 16 the term, other than what you just agreed to?
 17 **A Pre-loss condition could be various things. There could**
 18 **be prior damage on the vehicle as well, and sometimes the**
 19 **vehicle is actually restored to better than pre-loss**
 20 **condition when the repairs take place.**
 21 Q Anything else?
 22 **A Not at the moment.**
 23 Q Okay. But at a minimum, in your opinion, in order to
 24 restore pre-loss condition, in your work, you restore the
 25 vehicle as close as possible to the OEM specifications

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8 (Pages 29 to 32)

1 and the vehicle would have a similar look, fit, and
 2 finish?
 3 **A In my opinion.**
 4 Q Okay. Have you been given any different -- scratch that.
 5 Have you been trained or told by Am Fam that there's
 6 any other definition of pre-loss condition that you
 7 should be using in your work?
 8 **A No.**
 9 Q And that understanding that you have of pre-loss
 10 condition is being to restore the vehicle as close as
 11 possible to the OEM specifications and have a similar
 12 look, fit, and finish, you've had that understanding of
 13 what pre-loss condition is from your work at Am Fam,
 14 correct?
 15 **A We want to restore the vehicle to what it was prior to**
 16 **the loss.**
 17 Q The definition we've been discussing of your
 18 understanding of pre-loss condition, that comes from --
 19 your understanding comes from the work you've done at Am
 20 Fam, right?
 21 **A That's my understanding of the work that I've done in my**
 22 **career.**
 23 Q Okay. So it's not just Am Fam; it's also what you know
 24 from when you worked at Progressive?
 25 **A To return the vehicle to pre-loss condition.**

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1 Q Have you ever received any guidance or documents from Am
 2 Fam that described to you what -- what's required to
 3 fully restore a vehicle to its pre-loss condition?
 4 **A No.**
 5 Q Okay. You work with the -- with Am Fam's customer repair
 6 program on a regular basis, right?
 7 **A No, I do not.**
 8 Q You do not?
 9 **A I do not.**
 10 Q Okay. Are you familiar with the repair guidelines and
 11 guidelines they have for the customer repair program?
 12 **A I am not.**
 13 Q Okay. Let me understand. Do you get involved with
 14 repairs in adjusting losses if the vehicle has gone to a
 15 customer repair program or just vehicles that don't go to
 16 customer repair programs?
 17 **A Just vehicles that do not go to customer repair programs**
 18 **unless they're a total loss.**
 19 Q Okay. So if somebody goes to a customer repair program
 20 or a DRP shop for Am Fam, you would not be involved?
 21 You're only involved when it's a shop that Am Fam does
 22 not have a contractual relationship with?
 23 **A Correct.**
 24 Q Whenever there is a loss and Am Fam does not have a
 25 contractual relationship with the body shop that is going

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1 to do the repairs, will an Am Fam person adjust that
 2 loss?
 3 **A I'm sorry. Can you repeat the question?**
 4 Q Okay. Let me back up. When a person has a -- an auto
 5 loss, when they go to a designated repair program shop
 6 that Am Fam has an agreement with, then the designated
 7 repair program shop does the estimation and repairs the
 8 car pursuant to Am Fam's guidelines, correct?
 9 **A Correct.**
 10 Q Okay. And if somebody chooses not to go to a designated
 11 repair shop that Am Fam has a contractual obligation
 12 with, in those circumstances, will an adjuster from Am
 13 Fam, will they always be involved in doing an --
 14 adjusting the loss from Am Fam's perspective on that
 15 claim?
 16 **A Not always a field inspector, no.**
 17 Q Okay. What would be the circumstances where somebody
 18 like you, a field inspector, would not be involved?
 19 **A If we don't staff the area, if the customer submitted an**
 20 **estimate to our desk in Denver to review along with**
 21 **photos or a small dollar estimate, below \$1,000.**
 22 Q Okay. So if I understand, any time you have a loss
 23 that's below \$1,000 or if somebody submits the estimates
 24 and photos to be reviewed in Denver or if it just happens
 25 to be in an area in Washington where you don't have

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1 somebody who can easily get to it, that would be the only
 2 circumstances that you might pay the loss without having
 3 done an adjustment of the vehicle yourself?
 4 **A I would like to clarify under the \$1,000. That is**
 5 **because they have submitted an estimate --**
 6 Q Yeah.
 7 **A -- so those are paid by the casualty adjuster oftentimes**
 8 **and paid as is.**
 9 Q Okay. So if somebody has a 400 or 500 dollar glass loss
 10 or something, it doesn't even make it to your level?
 11 **A Correct. And glass claims don't make it to us either.**
 12 Q Right. And how often is it that you have an estimate
 13 that is prepared on a loss that would be over \$1,000 and
 14 somebody from Am Fam like you, a field adjuster, doesn't
 15 go and adjust the loss?
 16 **A I don't know the percentage time.**
 17 Q And I don't need to know if it's 6 or 8 or 7 exactly,
 18 more like a quantum. Is it very infrequent or every once
 19 in a while, or is it something that happens often?
 20 **A We have a desk team in Denver, so there's -- there are**
 21 **claims that go there. There are claims that come to the**
 22 **field. I couldn't tell you percentages.**
 23 Q Well, I don't need a percentage. I just want to know is
 24 it something that happens frequently or fairly
 25 infrequent?

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9 (Pages 33 to 36)

1 **A Daily.**
 2 Q Daily. Okay.
 3 And in those circumstances, somebody from Pemco --
 4 Pemco will only pay because they have a copy of the
 5 estimate and then the photos, correct?
 6 **A I --**
 7 MR. BENNETT: American Family.
 8 MR. NEALEY: I'm sorry.
 9 THE WITNESS: I don't know what --
 10 Q (By Mr. Nealey) Yeah. I'm sorry. American Family.
 11 I've been in a multi-day class certification for
 12 Pemco, so I have Pemco on my brain.
 13 In those circumstances, American Family will only
 14 pay on the loss when they have photographs to document
 15 what the damage is and the actual repair estimate,
 16 correct?
 17 **A Incorrect. There are times when we can't obtain photos**
 18 **that we make an effort to, and there are times that even**
 19 **if they send an estimate and photos, there still may need**
 20 **to be a field inspection that occurs.**
 21 Q Okay. So let's put it this way: The only time that
 22 American Family would then pay the loss without a field
 23 inspector having looked at the vehicle is when they
 24 determined the photographs and the estimate to be
 25 adequate to support the repair estimate?

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1 **A Correct. They also -- if the estimate is larger,**
 2 **sometimes they'll want some eyes on the vehicle as well.**
 3 Q Understood.
 4 So we can -- we can summarize by saying that in the
 5 State of Washington, at least, if claims are over \$1,000,
 6 that either it's going to be -- the estimate to repair
 7 the vehicle is going to be approved by Pemco -- approved
 8 by American Family because it's a DRP shop; it's going to
 9 be approved because somebody like you, a field adjuster,
 10 looked at the vehicle; or it's in this group where
 11 American Family looked at the photograph and the estimate
 12 and decided that that was sufficient to support the claim
 13 being made?
 14 **A Correct, or it could have been a glass claim or a towing**
 15 **claim.**
 16 Q I understand.
 17 **A There's multiple losses that could occur.**
 18 Q Okay. Well, let me rephrase because I like to be clear.
 19 When we're dealing with a claim that there has been
 20 damage to the paint or body work on the vehicle or its
 21 frame or structure, not a glass-only claim or towing
 22 claim only, where you have damage to the auto physical
 23 structure to the vehicle and that claim will either be
 24 paid based upon the estimate prepared by a DRP shop with
 25 a contractual relationship with American Family, it will

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1 be paid based upon an estimate that you or a field
 2 adjuster working for American Family has done, or it will
 3 be paid based upon a review by American Family of the
 4 photographs and the estimate prepared and a decision by
 5 American Family that the estimate fairly reflects what's
 6 shown in the photographs, and, therefore, it can be
 7 repaired based upon that?
 8 **A Correct.**
 9 Q Okay. We were talking through the inspection sheet,
 10 which is Exhibit 3, and I'd like to ask the next
 11 question, which is 10, "Section Or Clip."
 12 What does that have to do with diminished value?
 13 **A That's a good question because we don't use those parts.**
 14 Q Okay.
 15 **A If it is a front section or a clip, we will not put a**
 16 **full clip on a vehicle. We would total that vehicle, so**
 17 **I'm honestly not sure why that's on there. We wouldn't**
 18 **do that. The section is just, again, to get an idea of**
 19 **what the damages were at the time of the accident, what**
 20 **occurred.**
 21 Q Okay. And when you section a car, for instance, you
 22 could replace the whole quarter panel in the back by
 23 cutting it out?
 24 **A "Section" is in reference to a frame rail along with the**
 25 **other structural components in that area. It's multiple**

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1 **structural components.**
 2 Q Okay. Now, then you list repair quality issues.
 3 If there were repair quality issues, does that go
 4 into your determination of whether there is diminished
 5 value or not on the vehicle?
 6 **A We would ask the vehicle to be taken back to the shop to**
 7 **fix those repair quality issues first.**
 8 Q Okay. So if there's any repair quality issue, you don't
 9 consider that as part of your determination of the market
 10 diminished value loss? You would ask that those be fixed
 11 first?
 12 **A That is warranty work by the shop.**
 13 Q Okay. Now, it says "Post Inspection Needed," and it says
 14 "No."
 15 What is that about?
 16 **A There are times that we want to look at the vehicle**
 17 **repairs to determine if there are quality issues or not**
 18 **and to ensure that what we pay for is complete.**
 19 Q Okay. So let me see if I understand.
 20 So you -- when you inspect a vehicle, if you did
 21 under this, you're looking to see if the repair work was
 22 done correctly, meaning does it need to go back to the
 23 shop, and you're asking if the repair work was done in
 24 conformity with the estimate, i.e., whether what American
 25 Family paid for was actually done on the vehicle, right?

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10 (Pages 37 to 40)

1 **A Correct.**
 2 Q And those would be the same things you would look for if
 3 you did a reinspection as part of your normal
 4 reinspection of repaired vehicles, right?
 5 **A That is correct.**
 6 Q Okay. And you're concerned about whether the estimate is
 7 complied with because you don't want to be paying for
 8 more expensive operations than were actually done on the
 9 vehicle? That would be, in essence, you know, not -- you
 10 guys paid for some work that wasn't done on the car,
 11 right?
 12 **A It's about determining if the vehicle was restored to**
 13 **pre-loss condition based upon the agreement that was made**
 14 **with the shop.**
 15 Q Now, again, though, if you did an inspection of the
 16 vehicle and you found that the repairs were not done in
 17 conformity with the estimate, that wouldn't factor into
 18 your decision as to whether there was a market value loss
 19 on the vehicle? You ask that it be re-repaired, right?
 20 **A We would need to get it back to the body shop first and**
 21 **address those issues before we could move forward with**
 22 **addressing the diminished value claim.**
 23 Q To put it another way, when you actually decide how much
 24 market value loss, if any, there is in a vehicle, the
 25 results of that inspection don't play a role in that

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1 decision as to the amount of the loss because they would
 2 have either presumably been addressed by the shop, right?
 3 **A We would want it to be addressed by the shop first.**
 4 Q Okay. Okay. Now, the ISO search results, what's that
 5 for?
 6 **A That is to determine if the vehicle has other insurance**
 7 **losses on it.**
 8 Q You want to know through the Insurance Service Office
 9 database whether there's been a prior loss report on the
 10 vehicle, right?
 11 **A Correct.**
 12 Q Okay. And that database is far more comprehensive than,
 13 say, something like, you know, the various Carfax, right?
 14 **A There's insurance claim -- specific claim information in**
 15 **the ISO report that is not on the Carfax.**
 16 Q Okay. Because Carfax pulls its information from state
 17 vehicle accident databases, right?
 18 **A Carfax pulls its information from a lot of locations.**
 19 Q Does it pull it from insurance company claims?
 20 **A I believe it gets it from NICB and ISO --**
 21 Q Okay.
 22 **A -- and probably other locations.**
 23 Q What's your basis for that?
 24 **A Just my assumption.**
 25 Q Okay. So you don't know one way or another.

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1 MR. BENNETT: And I would caution you
 2 don't speculate.
 3 THE WITNESS: Okay. Sorry.
 4 Q (By Mr. Nealey) That's okay. That's okay.
 5 **A Yeah.**
 6 **I do know that MNVTIS reports pulled from MNVTIS**
 7 **when we report a vehicle is a total loss, it will show up**
 8 **there.**
 9 Q Okay. Okay. But only as to total losses?
 10 **A Total losses.**
 11 Q So you, meaning American Family, can, if you wish, on any
 12 claim, run and see if there's been an insurance claim
 13 ever made on that vehicle before, right? You run it by
 14 VIN number?
 15 **A We can search the ISO.**
 16 Q Yeah.
 17 **A Yes.**
 18 Q And the insurance company, such as American Family, they
 19 report claims on particular vehicles by VIN numbers, ISO,
 20 which then allows you to query by VIN number, correct?
 21 **A I do not know the reporting structure.**
 22 Q Have you ran one of these things before?
 23 **A They automatically come into our system.**
 24 Q Okay. And do you know if they're done by VIN number
 25 or...?

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1 **A You can search them by VIN or by the name of the party**
 2 **involved.**
 3 Q Okay. So you know you can either search by the VIN or
 4 the party ID number, and that tells you if there's been
 5 an insurance claim on the car?
 6 **A It can tell you if there has been; however, it's not**
 7 **complete because not everybody reports to ISO.**
 8 Q Who doesn't report to ISO?
 9 **A I don't know.**
 10 Q Do most insurance companies report to ISO?
 11 **A Many insurance companies do.**
 12 Q Do the large insurance companies all report to ISO?
 13 **A I don't know.**
 14 Q American Family reports to ISO, right?
 15 **A I believe -- I believe so.**
 16 Q Okay. Okay. "Vehicle Sold" -- well, scratch that.
 17 So what is -- what is the fact of a -- an ISO search
 18 result, what does that have to do with whether there's a
 19 market loss on the vehicle?
 20 **A If the vehicle has been involved in prior accidents, it's**
 21 **possible that it's already suffered a diminished value**
 22 **prior to this occurring.**
 23 Q And that would be of the damage of the prior accident
 24 overlapped with the damage of the current accident?
 25 **A It could be the fact that it's just been in a prior**

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11 (Pages 41 to 44)

1 accident. And if the reason for the claim being made is
 2 due to stigma, then it's already suffered potentially the
 3 diminishment of value.
 4 Q How do you decide if a claim is being made by stigma, the
 5 way you've used that term, or inherit diminished value as
 6 opposed to something else?
 7 A By reading what the customer submits to us.
 8 Q Okay. Now, "Vehicle Sold," what does that have to do
 9 with market value?
 10 A In order -- the vehicle loss of value is actually
 11 realized if the vehicle is sold because the customer can
 12 prove that they did suffer an actual loss of value by
 13 determining what they would have received for the vehicle
 14 had it not been involved in that particular accident
 15 versus what they actually did receive.
 16 Q Does your policy require a loss to be realized in order
 17 for a loss to be paid?
 18 MR. BENNETT: Object to the form;
 19 calls for a legal conclusion.
 20 Q (By Mr. Nealey) To your knowledge.
 21 A No.
 22 Q And you value your losses as of the date of the loss,
 23 right?
 24 A Yes.
 25 Q Yeah. Okay. So, for example, going back to the earlier

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1 example that we looked at -- well, this example, we've
 2 got -- Exhibit 3, we've got a date of loss of 11/24/2008
 3 and a claim made in 2011.
 4 To the extent that you believe that there was
 5 diminished value on this claim, you would determine that
 6 loss and diminished value as of the date of the loss,
 7 11/24/2008, right?
 8 MR. BENNETT: Object; calls for a
 9 legal conclusion.
 10 THE WITNESS: I believe -- yes, that's
 11 what we have it here for.
 12 Q (By Mr. Nealey) Okay. Okay. So it doesn't matter when
 13 the claim is made; you're going to value that loss as the
 14 amount of loss as of the date of the loss --
 15 A Yes.
 16 Q -- correct?
 17 Okay. Now, the "Professional Appraisal Done," yes
 18 or no, why is that on here?
 19 A Just so -- again, it's a summary so we know if we have
 20 one in our possession or not.
 21 Q Okay. Okay. Okay. "Round Table Comments," that's --
 22 do -- does every DV claim get roundtabled?
 23 A Yes.
 24 Q Okay. How many -- how many of these do you have on a --
 25 on a, say, monthly or yearly basis in Washington, to your

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1 knowledge, DV claims?
 2 A How many DV claims do we have?
 3 Q Yes. And when I say that, I'm just asking about
 4 uninsured motorists. How often do you have UIM DV claims
 5 in the State of Washington?
 6 A I wouldn't be able to tell you.
 7 Q How many have you had?
 8 A I wouldn't be able to tell you. I would have to pull
 9 every claim I've ever handled and individually look at
 10 them.
 11 Q Can you give me an estimate? 10, 15, 20, 5?
 12 A I don't feel comfortable guesstimating on that.
 13 Q Okay. Well, have you done over 50 UIM DV claims?
 14 A No.
 15 Q Okay. Have you done over 25 UIM DV claims?
 16 A I don't know.
 17 Q Have you done less than 10?
 18 A Again, I don't know the count.
 19 Q Okay. Now, is this checklist, do you create one of these
 20 checklists whenever you do a UIM DV claim?
 21 A Do I personally?
 22 Q Yeah.
 23 A No.
 24 Q Okay. So you can use this or you cannot, depending upon
 25 your choice?

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1 A Correct.
 2 Q Okay. Okay. And this says -- it's got a date for the
 3 roundtable, and there's -- it says William McCoy.
 4 Is he still a fellow manager of yours?
 5 A No.
 6 Q He's left the company?
 7 A He did.
 8 Q Okay. And then Bryce Hilden is a fellow manager with
 9 you, right?
 10 A Yes.
 11 Q And then it says PDR Matthew Foley.
 12 What's PDR?
 13 A Physical damage representative.
 14 Q Is that a claims rep, or is that something else?
 15 A Physical damage adjuster.
 16 Q Okay. So Matthew Foley is in the position that you were
 17 in up from 2009 to 2011?
 18 A He was when he was with the company.
 19 Q Okay. He's no longer with the company?
 20 A Correct.
 21 Q Okay. And then there's a proposed DV amount.
 22 Is the proposed DV amount, is that always the amount
 23 that comes from the Audatex system?
 24 A I don't know. I don't utilize this form.
 25 Q Okay. Well --

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12 (Pages 45 to 48)

1 **A So I don't know where he -- where he got this number**
2 **from.**
3 Q Well, are you -- have you ever used any numbers for
4 diminished value other than from the Audatex system?
5 **A Yes.**
6 Q Okay. Have you on UIM claims ever used numbers other
7 than from the Audatex system?
8 **A Yes.**
9 Q What were the circumstances when you used different
10 numbers?
11 **A There are a lot of circumstances because I look at each**
12 **claim individually.**
13 Q Well, other than the Audatex system, how have you valued
14 diminished value losses to actually come up with a
15 number?
16 **A I have utilized appraiser reports. I have utilized NADA**
17 **differences between varying categories for the**
18 **definitions, Kelley Blue Book, dealership quotes, selling**
19 **of the vehicle. There's all various -- there's**
20 **additional -- each issue is on its own merits and each is**
21 **looked at differently, and that information is taken into**
22 **account. It's not necessarily used.**
23 Q Okay. Okay. The next document I'm going to mark is
24 Exhibit 4. It was also produced to us as an exemplar or
25 a template form used in the State of Washington, and I

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1 would like to ask you what Exhibit 4, which is MM-2746
2 and 2747, what that is?
3 (Exhibit No. 4 marked for
4 identification.)
5
6 THE WITNESS: This is a release.
7 Q (By Mr. Nealey) Is this used for things other than
8 diminished value, or is this specific to diminished
9 value?
10 **A It appears this one is property damage release and**
11 **appears that it is just releasing all property damages,**
12 **not -- it doesn't specify diminishment value.**
13 Q Okay. Is Exhibit 4, is that used on UIM claims, or is
14 that just used on liability claims?
15 **A All claims made, release for all property damages.**
16 Q Do you get releases from UIM claims?
17 **A Yes.**
18 Q Always or...?
19 **A Not on a claim. On a diminished value, you might have a**
20 **claim.**
21 Q Okay. So when do you get a release from a UIM claim?
22 **A On a diminished value claim.**
23 Q Okay. So once you've paid and agreed to settle a
24 diminished value claim, you get a release?
25 **A On a diminished value claim, yes.**

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1 Q Okay. So you would use this form, Exhibit 4, whenever
2 you actually paid an amount on a diminished value claim
3 and got a release?
4 MR. BENNETT: Well, this is the
5 release.
6 THE WITNESS: Yes.
7 Q (By Mr. Nealey) Right.
8 **A Yes.**
9 Q But if it wasn't a diminished value release, you wouldn't
10 get a release on a UIM claim?
11 **A Correct.**
12 Q Why is diminished value treated differently and you get a
13 release from people in a UIM situation when you don't for
14 other portions or the UIM claim?
15 **A Because the person is claiming they have suffered a loss**
16 **in value of their vehicle, and that way, they -- we are**
17 **protecting our insured from future suits.**
18 Q Okay. Oh, so you use this Exhibit 4, you use this for
19 uninsured motorists, or do you use it for liability
20 claims?
21 **A Both.**
22 Q Both.
23 Okay. But why do you use Exhibit 4 to obtain a
24 release when it's your insured making the UIM claim for
25 diminished value when you don't for other portions of the

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1 UIM claim?
2 **A Because it's an uninsured motorist claim, therefore, we**
3 **take on the tortfeasor role, which is similar to**
4 **liability for a property damage claim.**
5 Q Well, if you repair somebody's car, you don't get any --
6 under the UIM claim, you get an estimate, you do the
7 work, go to a body shop; you don't get a release from
8 them, right?
9 **A We don't do that on liability claims either.**
10 Q Okay. Do you get a release when you pay a personal
11 injury claims under a UIM PI?
12 **A I do not handle personal injury claims.**
13 Q I'm going to mark as Exhibit 5 a copy of one of these
14 Audatex forms, and it's actually the -- let me ask you
15 before I mark this, there is a schedule which is listed
16 at American Family, 2750, and then there is the 2-page
17 Audatex form.
18 Does this schedule go with the Audatex form, or do
19 you know what this schedule is?
20 **A The first time I saw this schedule was while preparing**
21 **for this deposition.**
22 Q Okay. So I'll mark it separately then.
23 (Exhibit No. 5 marked for
24 identification.)
25 ///

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1 Q (By Mr. Nealey) I'm going to mark as Exhibit 5 this loss
 2 in value form from Audatex which is Bates-stamped
 3 MM-2748, MM-2749.
 4 When you get these Audatexs, is this always what
 5 they look like, just a 2-page form?
 6 A I don't know the page count, but yes, this is what it
 7 looks like on the first page.
 8 Q Okay. How do you -- how do you run these forms, and what
 9 do you do physically to run one?
 10 A You have the estimate, and then you click on the option
 11 to run a diminished value, and then you select the
 12 vehicle options the best you can. You add in the
 13 mileage, make sure you have the correct vehicle, verify
 14 all of that information, and then you -- there's another
 15 part of this that has the modifiers and what the
 16 definitions of those are, and you get those in, and you
 17 assign a number based on where they fit in those
 18 modifiers, and then you hit "enter."
 19 Q Okay. So the Audatex system, you don't have to look at
 20 the car to use that Audatex system; is that correct?
 21 A Are you asking if we have to inspect the vehicle to -- to
 22 utilize Audatex?
 23 Q Yeah. You don't have to inspect the vehicle to use
 24 Audatex, right?
 25 A We utilize Audatex on all of our desk reviews as well.

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1 Q Okay. Okay. So meaning that the -- somebody makes a DV
 2 claim, and assuming it's UIM, and when you're looking at
 3 that, you're always going to run the Audatex on the
 4 vehicle; is that correct?
 5 A For a DV claim?
 6 Q Yes.
 7 A Yes. We will always run it.
 8 Q And how you run it, you sit at your desk and you push a
 9 couple of buttons and the Audatex looks at the estimate
 10 on the vehicle repair? You make sure you've got the
 11 mileage right, options in correctly, and then Audatex
 12 prints out one of these reports, right?
 13 MR. BENNETT: Object to form.
 14 THE WITNESS: If it's an insured
 15 vehicle, odds that we have seen the vehicle are there;
 16 however, it could've been our DRP shop that wrote the
 17 estimate, so it may not pull over to link up with the
 18 estimates that they wrote and you may have to start from
 19 scratch. If it's a liability claim, it could be
 20 subrogation documents that we received and we never
 21 looked at the vehicle.
 22 Q (By Mr. Nealey) I'm just interested in UIM --
 23 A Okay.
 24 Q -- so I'm not asking about liability.
 25 If you've got a UIM claim, you -- you're going to

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1 have the repair estimate because it was either done by a
 2 DRP shop by American Family, itself, or the estimate was
 3 approved by American Family, looking at the estimate and
 4 the photographs, correct?
 5 A Uh-huh, correct; however, there won't be an Audatex
 6 report if the estimate was just paid by the casualty
 7 adjuster, if it was under \$1,000.
 8 Q Well, we're dealing with a class that requires damages
 9 over \$1,000, so that doesn't apply here.
 10 So if you've got over \$1,000 and somebody makes a DV
 11 claim in uninsured motorists, you're going to have one of
 12 these Audatex reports run, correct?
 13 A Yes.
 14 Q And every time you run the Audatex reports, you don't
 15 have to go look at the vehicle and don't go look at the
 16 vehicle; you do it sitting at your desk, right?
 17 A We have the option to look at the vehicle.
 18 Q Okay. Well, is there some information that you would
 19 look at the vehicle to gather information for this
 20 Audatex?
 21 A To get the options off the vehicle, it could be helpful.
 22 Q Anything else?
 23 A If the adjuster is there looking because they were
 24 concerned about a repair issue that the customer had
 25 mentioned to us, it's possible they could do it all at

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1 the same time.
 2 Q Okay. Meaning they could be sitting in front of the car
 3 and hit the button on the Audatex, as opposed to doing it
 4 in their office?
 5 A Yes. They don't have offices.
 6 Q The back of their car or kitchen.
 7 MR. BENNETT: I don't want to
 8 interfere, but I think the prior damage, as I understand
 9 it, were... (Inaudible.)
 10 THE COURT REPORTER: Can you repeat
 11 that? I'm sorry.
 12 MR. BENNETT: I think prior damage, as
 13 I understand it, were why they're looking, but maybe I
 14 misunderstand it.
 15 Q (By Mr. Nealey) So you said there's a -- a coding sheet
 16 that goes with this?
 17 A It's not a coding sheet. It breaks down the modifiers
 18 and gives you a range of what would classify in that
 19 range of modifiers.
 20 Q Okay. Okay. Well, I haven't seen the sheet. That's why
 21 I'm asking you.
 22 Is it a 1-page sheet or a 2-page sheet or 3-page
 23 sheet? Is it --
 24 A It's part of the document on how to use this software.
 25 Q Okay. And you've been given that as part of your work

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14 (Pages 53 to 56)

1 at --
 2 **A It's.**
 3 Q -- American Family?
 4 **A Sorry. I apologize.**
 5 **It's an Audatex product.**
 6 Q Okay.
 7 MR. BENNETT: And, Scott, I can tell
 8 you it is an exhibit to Jackie Hanson's deposition.
 9 MR. NEALEY: Okay. Well --
 10 MR. BENNETT: And there's a
 11 description of how it goes.
 12 MR. NEALEY: It very well may be. It
 13 wasn't in any of the documents that we got earlier, so
 14 anyway, we'll just --
 15 MR. BENNETT: No, just --
 16 MR. NEALEY: That's -- that's fine.
 17 Q (By Mr. Nealey) So when we look at the Audatex system,
 18 do you know what the scientific or methodological basis
 19 is that Audatex uses to calculate these things?
 20 **A I do not know where they -- I know that we start at 10**
 21 **percent. I don't know how it was derived at what we were**
 22 **going to start at.**
 23 Q Okay. Meaning that you start at an assumption that the
 24 vehicle lost 10 percent of its value and that's the
 25 maximum what you're going to have, right?

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1 **A That's what it is set up for based on American Family. I**
 2 **did not have anything to do with setting that value.**
 3 Q Okay. So every time that American Family runs the
 4 Audatex system, it has set the reduction in value at 10
 5 percent, and then it reduces that 10 percent; is that
 6 right?
 7 **A Yes.**
 8 Q Okay. Do you know any studies or -- or surveys or any
 9 basis that American Family has to set the default at 10
 10 percent?
 11 **A I do not know the reasons behind the decision.**
 12 Q Okay. Do you know who made that decision?
 13 **A No, I do not.**
 14 Q Is the Audatex system used all across American Family or
 15 just the State of Washington for diminished value
 16 purposes, if you know?
 17 **A I don't know the whole country.**
 18 Q Okay. But it's certainly used throughout the whole State
 19 of Washington?
 20 **A Yes.**
 21 Q Okay. Okay. So the default was set at 10 percent by
 22 American Family, but you don't know the basis for that;
 23 is that correct?
 24 **A I'm aware of the Georgia rulings, if that's where -- what**
 25 **you're asking.**

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1 Q Okay. You think that's where it maybe comes from?
 2 **A I am not part of the decision to decide on the**
 3 **percentage.**
 4 Q Okay. And the adjustments, however, for the mileage
 5 modifier, the current damage modifier, and the prior
 6 damage modifier, that just comes from you plugging in the
 7 correct modifier based upon the guidance you have from
 8 Audatex, right?
 9 **A Based on what the adjuster feels that it should be --**
 10 Q Okay.
 11 **A -- taking that guideline into account.**
 12 Q And you're doing that sitting at your desk, looking at
 13 the estimate on the vehicle, right?
 14 **A Yes. I would do it at my desk.**
 15 Q Okay. Now -- now, I notice here it says "NADA
 16 disclaimer."
 17 The Audatex system uses NADA, what we call, Black
 18 Book values; is that correct?
 19 **A We do not use NADA any longer. I think at the time that**
 20 **this was run, we were still using NADA, so we don't -- it**
 21 **doesn't show up on our values any longer.**
 22 Q Okay. Well, this says the values in the NADA guide
 23 assumes a vehicle in clean condition.
 24 I take it that at this time you were using NADA
 25 clean retail values, correct?

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1 **A Adjusted clean retail.**
 2 Q Okay. Meaning adjusted for the options on the vehicle?
 3 **A For the mileage on the vehicle --**
 4 Q Mileage.
 5 **A -- and options.**
 6 Q Yeah.
 7 Okay. So when you're determining on the Audatex
 8 system, at this time, you were determining the pre-loss
 9 value, you were doing so by, when this was done, using an
 10 NADA Black Book value of the vehicle at clean retail,
 11 adjusting for mileage and the options on the vehicle,
 12 right?
 13 **A To determine the value of the vehicle was based on the**
 14 **options and the mileage of the car. Audatex is an**
 15 **options-driven system.**
 16 Q And you said that now you don't use NADA Black Book.
 17 What are you using now to determine pre-loss value?
 18 **A We use Autosource.**
 19 Q Which is a product put out by Audatex?
 20 **A Yes.**
 21 Q Do you know what information they use?
 22 **A It's a market survey based on vehicles that have been**
 23 **listed for sale or are currently listed for sale.**
 24 Q When did you make that switch over?
 25 **A It was in -- I believe it was in two thousand -- no. It**

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15 (Pages 57 to 60)

1 was in 2011. I don't know the exact date.
2 Q And when you're doing a market survey under the -- under
3 the new computer system, are you also giving a clean
4 retail value adjusted for the options and the mileage?
5 A Can I clarify? Are you asking if we're running both in
6 NADA and Autosource.
7 Q No. I'm not asking that. My question was unclear.
8 My question is, with the current system you're using
9 with Autosource, you're also looking at the actual cash
10 value by looking at a retail -- clean retail value with
11 an adjustment for the mileage of the vehicle and the
12 options, right?
13 A Adjustments are made based on vehicle comparable to the
14 market.
15 Q And you're assuming clean retail, right?
16 A No. It's based on a typical vehicle --
17 Q Typical --
18 A -- and the market.
19 Q Typical vehicle. Okay.
20 Average vehicle?
21 A Typical.
22 Q Okay. Okay. Now, we looked at Exhibit 6, and you said
23 you never -- you hadn't seen this before.
24 Do you have any idea -- having seen it in
25 preparation for your deposition, any idea what this is.

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1 (Exhibit No. 6 marked for
2 identification.)
3
4 THE WITNESS: It looks like you put in
5 an ACV and it puts a number. I don't know how it -- I
6 don't know how it calculates. I don't know how to
7 utilize it. I have not seen it.
8 Q (By Mr. Nealey) Okay. Okay. Okay. I'm going to mark
9 as Exhibit 7 -- and I apologize to the reporter. It's
10 front and back, but I'm going to mark -- 7 is
11 AMFAM_MM-2751.
12 Is this a form letter that's available for you for
13 use in handling diminished value claims in the State of
14 Washington?
15 (Exhibit No. 7 marked for
16 identification.)
17
18 THE WITNESS: It is. It's slightly
19 different than the one we use.
20 Q (By Mr. Nealey) Okay. How is it slightly different?
21 A There's only six bullets, and the one we use is 8.
22 Q Okay. I see a letter here with a -- I'm going to mark as
23 exhibit -- as Exhibit 8 a letter that's AMFAM_MM-2774,
24 and this is a letter with seven bullet points, and
25 there's a 503 number at the bottom, which is, if my

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1 memory is correct, Spokane or Eastern Washington.
2 (Exhibit No. 8 marked for
3 identification.)
4
5 THE WITNESS: That's Oregon.
6 Q (By Mr. Nealey) Oregon. Okay. You're right. 503 is
7 Portland.
8 MR. BENNETT: So your memory was not
9 correct.
10 MR. NEALEY: My memory was not
11 correct. I'm forgetting my grandparents' phone number in
12 Spokane.
13 MR. BENNETT: Let the record
14 reflect --
15 MR. NEALEY: -- that I was incorrect.
16 Q (By Mr. Nealey) This has seven bullet points on it.
17 Can you tell me what -- what -- you remember eight
18 bullet points. Can you maybe tell me, looking at Exhibit
19 7 and Exhibit 8, if there are any bullet points that
20 wouldn't be in the Washington letter there and anything
21 you can remember that should be in the Washington letter?
22 A Is there a copy of the letter that I have written to Ms.
23 Bower?
24 Q I didn't find one in here. That's why I'm asking.
25 MR. BENNETT: There should be. If you

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1 didn't get that... (Pause.)
2 Q (By Mr. Nealey) I'm going to mark as Exhibit 9 -- this
3 is the letter that I found in the file addressed to Ms.
4 Bower. It's AMFAM_B-87.
5 And I'll give you as Exhibit 10 a copy of the letter
6 that Ms. Bower had sent you with her diminished value
7 assessment?
8 (Exhibit Nos. 9 through 10
9 marked for identification.)
10
11 Q (By Mr. Nealey) Do you remember or have you seen an
12 additional letter to Ms. Bower?
13 A There should be an eight-point letter.
14 Q Do you remember seeing it in preparing for the
15 deposition, or do you just believe there should be an
16 eight-point letter?
17 A I recall seeing one, outlining it, because it was also
18 referenced in my e-mails to her.
19 MR. BENNETT: So take two minutes?
20 MR. NEALEY: Yeah.
21 MR. BENNETT: I've got it next door.
22 MR. NEALEY: Okay.
23 (Recess from 11:24 a.m. to
24 11:36 a.m.)
25 ///

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1 (Exhibit No. 11 marked for
 2 identification.)
 3
 4 MR. NEALEY: When we took a break,
 5 Counsel was kind enough to go look and try to find what
 6 was being referred to, and I have marked as Exhibit 11
 7 what I have been handed, which was actually a letter that
 8 was sent to the attorney by Ms. McNally in a prior case
 9 involving an insured, Maryanovsky. The record can note
 10 that defense counsel has the same issue with pronouncing
 11 it that I did.
 12 Q (By Mr. Nealey) So I take it that if we don't find a
 13 copy in the -- in the claim file that you sent regarding
 14 Mrs. Bower's claim, that a letter was not sent in that
 15 case. Is that a fair statement?
 16 A I would need to look in the file to determine what
 17 occurred and the sequence of events.
 18 Q Okay. Well, if you send a letter, a copy is put in the
 19 file, right?
 20 A Yes.
 21 Q Okay. So if we look at the entire file and there isn't a
 22 copy of the letter, then the letter wasn't sent, right?
 23 A It's possible that the appraisal had already been
 24 received at the same time we found out she was presenting
 25 a diminished value claim. We had already received

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1 documents from her.
 2 Q Okay.
 3 A I would need to look though to see what -- the sequence
 4 of events.
 5 Q Well, when you get an appraisal -- is this letter only
 6 sent when somebody tells you they're going to present a
 7 claim and you send this letter to them, what's been
 8 marked as Exhibit 11, as an exemplar, do you send this
 9 letter to them as to what Am Fam is going to want?
 10 A When they verbally tell us that they want to present a
 11 diminished value claim or seek one, we do send this
 12 letter.
 13 Q Okay. And this is a template that is available and is
 14 used throughout the State of Washington?
 15 A Yes.
 16 Q Okay. Now, and this reflects what American Family
 17 believes what it needs to assess a diminished value case?
 18 A They're items that we request to review.
 19 Q Okay. Well, I'd like to go through this.
 20 Using Exhibit 11 as a -- as an example, first of
 21 all, this is your signature on this?
 22 A Yes, sir.
 23 Q Okay. Does it matter whether the person is represented
 24 by a lawyer or whether they're just making a claim
 25 without a lawyer whether this letter is sent out?

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1 A No.
 2 Q Okay. And the letter says, "In order to fully
 3 investigate and evaluate this claim, it will be necessary
 4 to provide the following written documentation," and the
 5 first item is "copies of all repair invoices for repair
 6 work that's been performed on this vehicle, including
 7 mechanical work."
 8 How does that -- Item 1, how does that fit into your
 9 consideration of the amount of market value loss on the
 10 vehicle?
 11 A It gives us an idea of how the vehicle has been
 12 maintained by the owner of the vehicle.
 13 Q And what does that have to do with the market value loss
 14 for diminished value as a result of damage to the
 15 vehicle's body, frame, and paint?
 16 A Because we're trying to determine when we are making --
 17 adjusting a diminished value claim if it's a result of --
 18 directly a result of our accident that occurred or
 19 another factor.
 20 Q Well, let's look at Ms. Bower as an example.
 21 Ms. Bower's car was hit by an uninsured motorist,
 22 and -- and was damaged and then was repaired.
 23 As to determining whether Ms. Bower's vehicle, with
 24 149 miles on it at the time of the accident, is worth
 25 less due to the damage that was done to the vehicle's

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1 frame, structure, or paint and body, how does copies of
 2 any and all repair invoices for repair work that's been
 3 performed on the vehicle, including mechanical work, how
 4 does that relate to the market value loss?
 5 A She didn't --
 6 MR. BENNETT: Object to form.
 7 THE WITNESS: She did not provide us
 8 with any documents of such and they weren't needed in
 9 that particular case.
 10 Q (By Mr. Nealey) Why weren't they needed?
 11 A There had been no maintenance done on the vehicle yet.
 12 Q Okay. Well, why would -- why would maintenance that was
 13 done on the vehicle, the maintenance work, why would that
 14 have anything to do with the market loss due to the fact
 15 that the car had damage to its frame, structure, paint,
 16 and body?
 17 A If there was an ongoing mechanical issue preexisting to a
 18 loss, it's possible that that could have impacted the
 19 value of the vehicle.
 20 Q What value of the vehicle are you talking about?
 21 A The value that the customer is making a claim to us for,
 22 loss in value.
 23 Q Well, okay. Let's stop for a second here.
 24 I'd just like you to assume that -- we would both
 25 agree, I believe, that Ms. Bower's vehicle had damage to

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17 (Pages 65 to 68)

1 the body -- the unibody structure of the vehicle and to
 2 its paint and body; is that correct?
 3 **A No, it is not correct.**
 4 Q Well, it had the quarter panel cut out and replaced,
 5 correct?
 6 **A It did not have any inner structure damage sustained**
 7 **except for a small cosmetic piece where the corner**
 8 **mounted to it.**
 9 Q Okay. So then we would agree that Ms. Bower's vehicle
 10 had body and paint damage to it?
 11 **A It had body and paint damage.**
 12 Q Okay. Now, if I am assessing the impact that that body
 13 and paint damage has on the vehicle as of the -- and its
 14 market value after repair, what is -- if the vehicle has
 15 some additional mechanical issue, what does that have to
 16 do with it?
 17 **A That's why we look at each claim individually, and if**
 18 **there was something impacting the value of the vehicle**
 19 **prior to the loss, then we need to know what was on the**
 20 **car.**
 21 Q So would the mechanical issues of any of the items you
 22 find in Exhibit 1, would those relate to what you believe
 23 to be the vehicle's post-repair value or what you believe
 24 to be its pre-accident value?
 25 **A It's something that we would take into consideration in**

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1 **determining if we felt a diminished value claim existed.**
 2 Q Why?
 3 **A Because if somebody has a nonworking engine or an engine**
 4 **that needs to be replaced soon, that's going to be an**
 5 **impact on the value to a buyer.**
 6 Q Yeah. Agree. But what is the fact that a car might need
 7 engine work or a car might not have air conditioning
 8 work, what does that have to do with the difference
 9 between its pre-accident value and its post-accident
 10 value as a vehicle that has had repair work done to
 11 its -- in the case of Ms. Bower's, it's paint and body?
 12 **A It assists us in determining the condition of the vehicle**
 13 **so that we can determine if there's other items that may**
 14 **be impacting the value of that vehicle. It may not be**
 15 **from the accident.**
 16 Q Well, does the fact that a vehicle may have some
 17 mechanical work that needs done on it or has had
 18 mechanical work done on it -- is the fact that a vehicle
 19 has had mechanical work done on it, is it part of the
 20 Audatex system that you use? Is that an input into that?
 21 **A No.**
 22 Q Okay. Can you give me an example of any case where you
 23 have ever -- in adjusting a diminished value loss you
 24 have ever considered as part of actually valuing the
 25 market value loss the fact that a car has had prior

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1 mechanical work done on it?
 2 **A Well, there was an Audi SUV that had constant issues with**
 3 **the electrical system, and there was an extreme history**
 4 **of it and provided all the documents by the customer of**
 5 **all the -- all the work and how often it was in the shop**
 6 **for those electrical issues that were unrelated to the**
 7 **accident. They were preexisting.**
 8 Q So what does that have to do with a reduction in market
 9 value from its pre-accident value to its value as a car
 10 that has had repairs to damage on its body, frame, and
 11 structure or paint?
 12 **A All of that information was reported by the dealership**
 13 **onto Carfax as well, so a future buyer would see all**
 14 **those incidents, which could impact the value to the**
 15 **buyer.**
 16 Q But if that same Audi had or did not have those prior
 17 mechanical issues, it's going to affect its pre-accident
 18 value and its post-accident value, right?
 19 **A It depends. I would need to know more than that. I**
 20 **wouldn't make my decision off of one question.**
 21 Q Can you tell me any way in which invoices for repair work
 22 that had been performed, including mechanical work or the
 23 maintenance records, affects the difference between the
 24 pre-loss value and the post-loss value of the vehicle?
 25 **A That's basically a duplication of the first -- first**

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1 **bullet point.**
 2 Q Okay. So then combining bullet point 1 and 2, can you
 3 tell me how any records of mechanical work that's been
 4 done on the car or repair work done on the car affects
 5 the difference between the pre-loss value of the vehicle
 6 and its post-repair value?
 7 **A A buyer may not be willing to pay as much for a vehicle**
 8 **if they know there's been an extensive mechanical history**
 9 **on the car.**
 10 Q And that affects a vehicle's pre-loss value, right?
 11 **A It could affect the post-loss value as well.**
 12 Q Do you have any evidence to show that the -- that the
 13 effect of any prior mechanical repair work on the
 14 vehicle, that the impact that it would have on the
 15 vehicle as a percentage between its pre-loss value and
 16 its post-repair value changes?
 17 MR. BENNETT: Object to form.
 18 THE WITNESS: That's why we take each
 19 claim on its own individual basis.
 20 Q (By Mr. Nealey) Well, I'm not asking you whether you
 21 take each claim on an individual basis. I'm asking you
 22 if you have any evidence or any explanation even you can
 23 give me of why the impact of prior mechanical work, if
 24 any, on the vehicle or prior maintenance of the work, if
 25 any of it, that that would change between its

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1 pre-repair -- pre-loss condition -- pre-loss value and
2 its post-repair value.
3 MR. BENNETT: Object to form.
4 THE WITNESS: I didn't say it would
5 change between them. It could be the same.
6 Q (By Mr. Nealey) And, in fact, you would expect it not to
7 change, right?
8 **A No. I didn't say that either.**
9 Q Okay. Well, can you give me any reason why it would
10 change?
11 **A I explained that a buyer may not be willing to pay as**
12 **much for the vehicle knowing it has had previous issues.**
13 Q And they would be unwilling to pay that extra amount of
14 money before the accident that Pemco covered as much as
15 after the accident that Pemco covered, right; it wouldn't
16 change?
17 **A I do not work for Pemco.**
18 Q I'm sorry, Am Fam, so scratch that. Let me ask again.
19 And, in fact -- if, in fact, somebody was willing to
20 pay less for a vehicle because of prior repair work on a
21 car or what the maintenance records showed, that impact
22 is going to be the same to its pre-loss value as it is to
23 its value after it's been in an accident and had repairs
24 to its body, frame, paint, and structure, right?
25 MR. BENNETT: Object to form.

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1 THE WITNESS: I don't understand your
2 question.
3 Q (By Mr. Nealey) Can you give me any reason -- any
4 evidence to show that the impact of mechanical work on a
5 vehicle or repair work on a vehicle would -- would vary
6 as to its impact on market value for the vehicle before
7 the accident, pre-loss value, as opposed to its
8 post-repair value?
9 MR. BENNETT: Same objection; form.
10 THE WITNESS: Are you asking if
11 there's a difference in the type of mechanical work that
12 was completed?
13 Q (By Mr. Nealey) No. I'm asking you if you can give me
14 any explanation or any evidence to show that if you had
15 an impact on the vehicle's pre-loss value --
16 **A Okay.**
17 Q -- due to mechanical work or repair records or anything,
18 that that would change or be any different than the
19 impact you have after the vehicle has been in an accident
20 where it sustained body, paint, frame, or structural
21 damage and was repaired by American Family, it's value
22 after those repairs.
23 **A The value could remain the same after the accident of**
24 **what it was pre-loss. Again, that's why we look at each**
25 **claim and take all factors into consideration.**

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1 Q So you would agree with me that if there is an impact due
2 to mechanical work or repair work that was done on the
3 vehicle, it's going to be the same impact to its pre-loss
4 value as its post-repair value, right?
5 MR. BENNETT: Object to form.
6 THE WITNESS: There's not always
7 necessarily a loss of value --
8 Q (By Mr. Nealey) Okay.
9 **A -- as with repair work.**
10 Q But if there is a loss, it's going to remain the same to
11 its pre-loss value as its post-repair value, right?
12 MR. BENNETT: Object to form.
13 THE WITNESS: I do not know.
14 Q (By Mr. Nealey) Okay. Well, let me give you just a
15 hypothetical, okay? Let's assume that you have
16 determined that because of the repair work that was done
17 on this car and the mechanical work, for instance, your
18 Audi, that the Audi had \$1,000 less pre-loss value as a
19 result of those preexisting mechanical issues, do you
20 have any evidence to show that the -- that the post-loss
21 value would also not be \$1,000 lower?
22 MR. BENNETT: Object to form.
23 THE WITNESS: I do not have any
24 physical evidence.
25 Q (By Mr. Nealey) Okay. And you would assume that

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1 whatever impact mechanical work would have on its
2 pre-loss value, you would see the same impact after it
3 has been in an accident covered by American Family, where
4 it had body, paint, frame, or structural repair, right?
5 **A It may have --**
6 MR. BENNETT: Object to form.
7 THE WITNESS: -- retained the exact
8 same value that it had before the accident.
9 Q (By Mr. Nealey) Okay.
10 **A Just because it had body, frame repair work doesn't mean**
11 **that it lost value.**
12 Q I'm not saying that, but whatever impact there was from
13 mechanical work or the repair records on the vehicle is
14 going to be the same to its pre-loss value as its
15 post-repair value, right?
16 MR. BENNETT: Object to form.
17 THE WITNESS: There may not have been
18 a loss in value from the mechanical work. Again, it's
19 something we take into consideration to know what the
20 history of the vehicle is.
21 Q (By Mr. Nealey) So to put it another way, if you
22 determine a vehicle loses 2 percent of its value to its
23 pre-loss value because of mechanical work, then you're
24 going to assume that it's going to lose 2 percent of its
25 value after repairs to its post-repair value due to those

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1 mechanical issues, right?
 2 **A No. I would not assume that.**
 3 Q Would you assume it would change?
 4 **A I do not know.**
 5 Q Do you have any evidence it would change?
 6 **A I would look at each claim and everything submitted on**
 7 **its own to see what we have.**
 8 Q Do you have any evidence you can give me or any logical
 9 explanation why the impact of repair work on a vehicle or
 10 the mechanical records, the impact on the value of that
 11 vehicle would change between its pre-loss value and its
 12 post-loss value?
 13 **A It's all opinion by everybody providing value.**
 14 Q Okay. So you don't have anything you can point me to
 15 that somehow the impact of mechanical work would change
 16 from a pre-loss value to a post-loss value?
 17 **A I never said that it would change. I never said it**
 18 **wouldn't change.**
 19 Q You don't have any evidence either way?
 20 **A I did not say it would change.**
 21 Q Okay. Good.
 22 Now, then the "names and auto insurance policy
 23 numbers for all insurance companies that have provided
 24 physical damage coverage for this vehicle."
 25 Why do you need that?

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1 **A That is so that if there has been a potential prior loss**
 2 **on a vehicle, if we need to obtain new photos or**
 3 **information from the prior insurance company on what that**
 4 **damage was, we may call and ask for some photos, if**
 5 **they'll release them to us.**
 6 Q Now, you've already run this vehicle at this point in
 7 the -- in the ISO database, right?
 8 **A If we have the VIN and ICS, it runs automatically.**
 9 Q Okay. And you always have the VIN, right?
 10 **A We don't always have the correct VIN, if it wasn't set up**
 11 **on the policy correctly, so sometimes it takes a physical**
 12 **inspection to get the correct VIN.**
 13 Q Well, if you plug the VIN in, it's plugged in wrong,
 14 because it has VIN check, it just doesn't run and it
 15 tells you there's an error in the VIN, right?
 16 **A It's like I said: If sometimes it's on the policy**
 17 **incorrectly --**
 18 Q Yeah.
 19 **A -- and it takes a physically inspection to verify the**
 20 **actual VIN, we would not have had the ISO --**
 21 Q Well --
 22 **A -- on the correct car --**
 23 Q Okay.
 24 **A -- at the initial reporting of the claim.**
 25 Q Well, it will tell you that the -- it will tell you that

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1 it's the wrong VIN?
 2 **A We look at the VIN and verify it against the policy.**
 3 Q Well, you don't physically do that. You look at the
 4 repair estimate, if it's done by a DRP shop, right, and
 5 you pull the VIN, if need be?
 6 **A There's a photo of the VIN, and it's compared in the shop**
 7 **because DRP is expected to verify it's an accurate VIN --**
 8 Q Okay.
 9 **A -- against the policy.**
 10 Q So you don't actually go look at the vehicle to do it;
 11 you look at the photograph?
 12 **A I do not handle DRP claims.**
 13 Q Okay. Well, when you have a -- when you go out and
 14 estimate, you check the VIN, right?
 15 **A In person.**
 16 Q Yes. And if it's a DRP, it's done by the DRP shop?
 17 **A I do not work at the DRP shops.**
 18 Q Okay. But the sole reason to ask for all names and
 19 insurance policies is so you can then call those
 20 insurance carriers and ask for records on prior
 21 accidents?
 22 **A It's if we have a concern about something that may not**
 23 **have been repaired.**
 24 Q Oh, it's unrepaired damage --
 25 **A Potentially.**

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1 Q -- you're looking for?
 2 Okay. Anything other than unrepaired damage?
 3 **A It could be that our impact was on top of the other one.**
 4 **There could be a variety of reasons.**
 5 Q Well, if your impact was on top of an earlier impact, how
 6 does that impact your --
 7 **A I would hope we would have already called them and -- to**
 8 **obtain -- so we can separate the damages.**
 9 Q Okay. And, in fact, whenever a vehicle is brought in,
 10 one of the things that you do when you estimate is you
 11 look to see if there's prior damage in the area of the
 12 impact, right?
 13 **A Yes, sir.**
 14 Q Okay. And you record in your file in your estimate if
 15 there's prior -- prior impact in the area, right?
 16 **A Yes.**
 17 Q Okay. So, for instance, when we look at Ms. Bower's
 18 claim and we look at your -- just as an example, I'll
 19 mark as Exhibit 12 -- here is a document entitled
 20 AMFAM_B-12.
 21 This was created by you?
 22 (Exhibit No. 12 marked for
 23 identification.)
 24
 25 THE WITNESS: No.

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1 Q (By Mr. Nealey) Who created that?
 2 **A This is a page in ICS, which is our claims system.**
 3 Q Okay. And on here, there's a note that says "no prior
 4 damage"?
 5 **A I did not fill that out. That's filled out by the care**
 6 **center when she reports the claim.**
 7 Q Okay. That's in -- so this is an -- so Ms. Bower was
 8 asked whether there was prior damage in the area?
 9 **A She is asked by -- every customer is asked at the time of**
 10 **the report if there's prior damage on the car.**
 11 Q Okay. So when you send this letter out, which has been
 12 marked as Exhibit 11, when you send it out, you've
 13 already asked the customer with the initial claim if
 14 there was any prior damage on the car, right?
 15 **A They've been asked. It doesn't mean that there wasn't**
 16 **prior damage on the car.**
 17 Q Okay. But every time that you send this letter out
 18 asking for this information, Am Fam has already asked --
 19 with the initial intake of the claim, they've already
 20 asked the insured whether there was prior damage on the
 21 car, right?
 22 **A The customer was asked in this case, yes.**
 23 Q Okay. Well, that's a standard thing to do, right?
 24 **A I believe so. It's a care center --**
 25 Q Okay.

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1 **A -- task.**
 2 Q And then the care center notes no prior damage or they
 3 note prior damage, right?
 4 **A Based on what the customer tells them.**
 5 Q Okay. Understood. Understood.
 6 And then when you prepared the estimate, you note
 7 whether there's any prior damage on the estimate, if
 8 there is, right?
 9 **A I don't always put it on the estimate. I put it in my**
 10 **notes --**
 11 Q Okay.
 12 **A -- if there's something I'm concerned about.**
 13 Q Okay. So we can be assured that any time that a claim
 14 gets to the -- has moved forward, the customer has been
 15 asked with the intake of the claim whether there was
 16 prior damage, and then somebody from Am Fam, an adjuster
 17 like you, or somebody working on behalf of Am Fam at the
 18 DRP shop, has already checked to the actual physical
 19 damage on the vehicle to look for prior damage in that
 20 area, right?
 21 **A Prior damage is addressed, and a lot of times we are able**
 22 **to address it already, yes.**
 23 Q Okay. Okay. So then we've got 4: "Copies of any and
 24 all appraisals or estimates of repair for any and all
 25 insurance claims in which the vehicle has been involved."

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1 **A Uh-huh.**
 2 Q Uh-huh. Why do you ask for that?
 3 **A We don't insure a lot of vehicles from start to finish of**
 4 **their lifetime. Customers change insurance companies.**
 5 **And that just assists us in knowing if the vehicle has**
 6 **been involved in other losses.**
 7 Q Well, if you've insured the vehicle for the whole time,
 8 do you take that bullet point out of this letter, or do
 9 you just send the letter?
 10 **A I don't look to see when the person purchased the car**
 11 **versus when the policy is taken out.**
 12 Q Okay. So you would send the same letter whether the car
 13 has been insured from Day 1 with zero miles or if they
 14 had just gotten it, same letter?
 15 **A And a customer can tell me that it had -- it had been**
 16 **insured since it was brand new.**
 17 Q Okay. And, again, 4 is asking for the same information
 18 that you are asking people when they originally called
 19 in, which is to find out if there's prior damage in that
 20 area of the vehicle, right?
 21 **A Again, it's a call center function that I don't have**
 22 **their list of questions that they ask, but it does appear**
 23 **that it was asked.**
 24 Q Okay. But the Item 4 in the letter that's been marked as
 25 Exhibit 11, the purpose of that is to try to get any --

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1 any information on prior accidents that might be in the
 2 same area of the vehicle, right?
 3 **A Yes.**
 4 Q Okay. And Exhibit 5 [sic], "a notarized copy of the bill
 5 of sale agreement for this vehicle," what is that for?
 6 **A This is a form letter. And the notarization I don't**
 7 **believe occurred. This was off of the previous forms**
 8 **where in some states I believe it does -- it can be**
 9 **notarized. Bill of sale, it helps us on a newer vehicle.**
 10 **In some cases, it can show us more of what the value of**
 11 **that vehicle was so we know a start value. Values aren't**
 12 **always available on brand new vehicles on our system.**
 13 Q So you ask everybody to get you a notarized bill of sale
 14 on their vehicle?
 15 **A They can provide a bill of sale. They are useful on**
 16 **newer cars. Again, this is a form letter.**
 17 Q Okay. But you specifically -- but this -- regardless of
 18 whether it's a new vehicle or old vehicle, you can look
 19 up the value of the vehicle in the -- in one of your
 20 systems and find out what the actual cash value of the
 21 vehicle is, right?
 22 **A Not always.**
 23 Q Well, you looked up Ms. Bower's vehicle and it had 149
 24 miles on it, right?
 25 **A I didn't look it up.**

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21 (Pages 81 to 84)

1 Q The Audatex system looked it up, right?
 2 **A Because there was a value for that vehicle --**
 3 Q Yes.
 4 **A -- doesn't mean there's a value for all vehicles.**
 5 Q Okay. So put it another way, can you think of any
 6 example where -- where you, in addressing a diminished
 7 value claim, you couldn't look up the value of the
 8 vehicle and you relied upon a notarized bill of sale
 9 agreement for the vehicle? Did you actually rely on it?
 10 **A Yes.**
 11 Q When?
 12 **A It wasn't notarized, but it was a bill of sale. The**
 13 **customer had had the vehicle for a week. It was struck.**
 14 **And then he traded it in before he made the claim, and we**
 15 **did obtain a bill of sale to determine the realized value**
 16 **and the loss in value.**
 17 Q And you found a loss in value?
 18 **A The dealership -- he had traded in the vehicle and**
 19 **suffered a tangible loss in value.**
 20 Q The dealer came in and said, "We gave him less money for
 21 it"?
 22 **A The dealer provided us with a prior value and the post**
 23 **value based on their opinion, and it was solely due to**
 24 **the accident.**
 25 Q Okay. So Number 5 really applies in a circumstance where

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1 somebody is in the meantime sold the car and they're
 2 making a claim, right?
 3 **A It could. I would not not review somebody's claim if**
 4 **they did not provide me a bill of sale.**
 5 Q Okay. Well, and then we've got 6, "If this vehicle is
 6 leased, a copy of the lease agreement."
 7 And is that in there for the issue we discussed that
 8 you deny it as a lease claim unless there's something in
 9 the lease that somebody can point to that they have some
 10 obligation?
 11 **A That's so that we know what the leasing terms are and who**
 12 **has the rights to potentially recover diminished value or**
 13 **make that claim.**
 14 Q Okay. Well, do you explain to people that, "Gee, if" --
 15 "unless you" -- "unless you owe something under the lease
 16 for diminished value to the person from whom you've
 17 leased it, we're going to deny the claim," or do you just
 18 ask everybody to get you a copy of their leasing
 19 agreement?
 20 **A We are under duty to investigate each claim individually,**
 21 **and so we obtain the documents and make our decision then**
 22 **as to whether it would be covered in that particular**
 23 **case.**
 24 Q How many times can you think of that you've actually
 25 looked at a lease agreement and determined -- in a UIM

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1 context, you've looked at a lease agreement in a UIM
 2 context and decided that your insured can make a claim?
 3 **A I have not had it in a UIM context. I have had it in a**
 4 **property damage context that it was in the language.**
 5 Q Okay. So every time you've asked for the lease
 6 agreements, and you've never found it to change your
 7 decision that you would deny the claim as to a UIM claim,
 8 right?
 9 **A At that time because it wasn't the leasing company making**
 10 **the claim. It was the renter making the claim.**
 11 Q Okay.
 12 **A And it was solely based on their particular lease.**
 13 Q Yeah. Okay. Okay. And, in fact, you know in your
 14 system you can pull up -- with the insured information,
 15 you know if a vehicle is leased or not, right?
 16 **A No.**
 17 Q Your system doesn't tell you if a vehicle is leased?
 18 **A You would have to run the plates through the state.**
 19 Q Okay. So you can't go into the Am Fam data system and
 20 find out if the vehicle was owned or leased?
 21 **A No.**
 22 Q Okay. 7, "A copy of the current Department of Motor
 23 Vehicle' automobile title for this vehicle," and the
 24 title history.
 25 So you ask the insured to go get a title history

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1 from the Washington State Department of Licensing?
 2 **A If they're able to provide it, we would have a copy of it**
 3 **to know if the vehicle has a prior salvage history.**
 4 Q Well, you can run that, right?
 5 **A We can.**
 6 Q Yes.
 7 **A And oftentimes we do.**
 8 Q Okay. Okay. Well, what has -- what do you use that for
 9 regarding handling UIM claims?
 10 **A If the vehicle has a prior total loss history, that,**
 11 **obviously, has more than likely impacted the value, but**
 12 **it just gives us information to help make our decision if**
 13 **we feel that it has diminished value as a result of this**
 14 **particular loss.**
 15 Q So you're really asking for them to go to the Department
 16 of Licensing and get a title history so you can tell if
 17 the car has been -- has a salvaged title, right?
 18 **A They can provide us with a copy of their registration**
 19 **because it says it on their generally --**
 20 Q Okay.
 21 **A -- or a copy of the title.**
 22 Q So the title history isn't needed really. The
 23 registration would be fine because it's marked as a
 24 salvage title, right?
 25 **A Yes. There should be a declaration on it.**

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22 (Pages 85 to 88)

1 Q Okay. So although the letter asks them to go get a
2 complete title history from the Washington Department of
3 Licensing, you don't actually need that. You just need
4 to know if the title is branded as salvaged, right?
5 **A That's what we're looking for, and how they determine to**
6 **send that information to us can vary.**
7 Q Okay. And it's just as easy for you guys to go look at
8 the Washington Department of Licensing and see if it's a
9 salvaged title as it is for the insured, right?
10 MR. BENNETT: Object to form.
11 THE WITNESS: We can run it. However,
12 we also have to report all our usage to the state and it
13 has to be reasonable for business uses only, so we have
14 to document and keep track of what we run through the
15 state.
16 Q (By Mr. Nealey) Okay. Meaning you can do it at your
17 computer desk?
18 **A Yes.**
19 Q Okay. "Any notarized expert appraisals you have obtained
20 providing any diminution in value on the vehicle. Please
21 note that appraisal fees will not be reimbursed."
22 You require that these things be notarized?
23 **A No.**
24 Q Why does it say "notarized" then?
25 **A That's what the form letter that we send out says.**

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1 Q Okay. Well, did you ever ask yourself "if we don't ask
2 that things be notarized why we say it has to be
3 notarized"?
4 **A If a customer provides me something to review, I'm going**
5 **to review it whether it's notarized or not.**
6 Q Okay. But you know that it's not easy. You've got to go
7 take the document of the person down, and they've got to
8 go down to a notary and then they've got to pay the
9 notary fee and they've got to stand in front of somebody
10 to do the notarization, right?
11 **A Notarization doesn't always cost money, if you go to your**
12 **bank where you bank at.**
13 Q But as far as you, in looking at this thing, whether it's
14 notarized or not is irrelevant to your decision?
15 **A To me personally, yes.**
16 Q Okay. Are you aware of any policy within American Family
17 in the State of Washington that these things have to be
18 notarized?
19 **A No.**
20 Q Now, when you send this letter to people, which I know it
21 wasn't sent to Ms. Bower, but I think you said you
22 typically send this letter, right?
23 **A I --**
24 Q This is normally sent?
25 **A I typically do. I would need to look at the claim file**

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1 **to determine why. It may have been she had already sent**
2 **us an appraisal --**
3 Q Okay.
4 **A -- for review.**
5 Q It would be very unusual that this letter was not sent?
6 **A Very unusual, yes.**
7 Q So looking at the usual custom and practice of sending
8 this letter, when this letter is sent, you would already
9 have an Audatex DV report on the vehicle, right?
10 **A No.**
11 Q Well, you could have obtained one, right?
12 **A No, not always.**
13 Q What information to run an Audatex report would you need
14 to get the information on Exhibit 11 from the insured
15 before you could run that report?
16 **A Well, if we --**
17 Q Can you tell me anything on here that you need to run the
18 Audatex report?
19 **A The prior damage is one of the questions, and if it's**
20 **possible that the field adjuster doesn't have complete**
21 **photos of the vehicle, they may not know if there's prior**
22 **damage or not. If it was handled as a desk review,**
23 **oftentimes we only obtain a few photos from the shop that**
24 **show the area of damage.**
25 Q Any other circumstances?

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1 **A That's the one that is coming to my mind at the moment.**
2 Q Okay.
3 **A There may be others I can think of, but --**
4 Q So you could run the Audatex diminished value report on
5 any claim without this information other than a
6 circumstance where you might have had a desk review and
7 the photos aren't sufficient?
8 **A Or we don't have the mileage for the vehicle, which is**
9 **one of the modifiers on there, and if we're taking an**
10 **estimate from a shop, we may not have the mileage.**
11 **Oftentimes they don't include the mileage on the**
12 **estimates.**
13 Q Okay. Whenever you -- whenever an Am Fam adjuster goes
14 out, you always write down the mileage, right?
15 **A We try to obtain it. It's not always possible.**
16 Q Why would it not be possible?
17 **A In the case of Ms. Bower's car where the shop had the**
18 **battery disconnected and out of the car.**
19 Q And, in fact, if I were to show you your DRP guidelines,
20 have you ever seen them before?
21 **A I have not read them.**
22 Q Okay. Okay. When you get the Audatex reports, do you
23 send them to your customers when they've made a
24 diminished value request?
25 **A They can review them, absolutely.**

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1 Q Do you send them to them?
2 **A We do.**
3 Q Okay. Because I don't see a copy ever sent to Ms. Bower.
4 **A Okay.**
5 Q Do you have a form letter that you -- you have that you
6 transmit the Audatex that you're aware of?
7 **A As far as transmitting the Audatex to rewrite the Audatex**
8 **report?**
9 Q No. No. A cover letter to send it to the clients, your
10 insured, saying, "Here's our DV assessment from Audatex.
11 Here's the basis and here's how we assess it."
12 **A We don't settle every claim off of Audatex, so no, we**
13 **don't have a form.**
14 Q Okay. Do you have a standard practice within American
15 Family with handling UIM claims to send the Audatex to
16 your insureds?
17 **A We will provide the customer with any information to show**
18 **them what they want to see.**
19 Q Well, if they don't know that you ran an Audatex, they
20 don't know to ask to see it, right?
21 **A We'll tell them that we run an Audatex.**
22 Q Okay. Do you have a standard form letter or something
23 that you send to people explaining the methodology where
24 you attach it, like this letter that we've seen as
25 Exhibit 11?

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1 **A Letters are preformed.**
2 Q Okay. Have you ever written a letter to anyone attaching
3 an Audatex and explaining how it's calculated?
4 **A Yes.**
5 Q Can you tell me what claim that might be in?
6 **A No. I am not able to --**
7 Q Do you have a vehicle that comes to mind?
8 **A I do not.**
9 Q Okay. Now, I'm going to mark as Exhibit 13, which has
10 been Bates-stamped AM FAM_MM-2775.
11 Do you know what this is?
12 (Exhibit No. 13 marked for
13 identification.)
14
15 THE WITNESS: I do not.
16 Q (By Mr. Nealey) Okay. Is that a printout that comes
17 from the Audatex system, or is related to the Audatex
18 system?
19 **A It is not the printout I get.**
20 Q Okay. So you don't know where -- you haven't seen a
21 document that looks like that?
22 **A No, I have not.**
23 Q Okay. Now, if we look at this, which I've marked as
24 Exhibit 13, there is a -- it says diminution calculation,
25 base loss of value 10 percent of adjusted retail of

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1 adjusted retail ACV, and that's the same number used by
2 the Audatex system, right?
3 **A 10 percent?**
4 Q Yeah.
5 **A Yes.**
6 Q And then we've got the damage severity modifier.
7 Are these the same damage severity modifiers used by
8 Audatex?
9 **A Without the form in front of me, I'm not able to say 100**
10 **percent.**
11 Q Do they appear to be the same?
12 **A They appear to be similar.**
13 Q Okay. Let me pull out the Audatex. I'm going to give
14 you Exhibit 5. It may help you a little bit.
15 Does that refresh your recollection, having one of
16 the printouts from Exhibit 5? Do you see anything
17 different about the diminution calculation shown here on
18 Exhibit 13 under "damage severity modifier" different
19 than what you remember seeing from Audatex?
20 **A I guess what I was referencing is I was referencing the**
21 **sheet that outlines these modifiers in the Audatex**
22 **because it's not on the --**
23 Q Okay.
24 **A -- actual Audatex report we receive.**
25 Q Okay. And then the mileage modifier, does that appear to

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1 be the same mileage modifier on Exhibit 13 that you would
2 input into the Audatex system for Exhibit 5?
3 **A We do not add a mileage modifier. It's automatic.**
4 Q Okay. Meaning the system does it itself?
5 **A Yes.**
6 Q Okay. Does your guide to Audatex tell you what the
7 adjustment ranges are, or do you know just know by
8 plugging a bunch of numbers?
9 **A You put the mileage in.**
10 Q Okay.
11 **A And it automatically calculates it.**
12 Q Automatically calculates. Okay.
13 And nothing in the guide -- the documents you've
14 looked at on how you use the system describes what the
15 cutoffs are for the mileage modifiers?
16 **A There may be. I do not have it memorized.**
17 Q Okay. I'd like you to turn to Exhibit 9.
18 **A (Witness complies.)**
19 Q And then look at Exhibit 8 -- Exhibit 10 as well, which
20 is the letter that Ms. Bower sent to you.
21 Do you have any -- as the adjuster on the claim, do
22 you have any criticism of the methodology used to
23 calculate diminished value in the -- Mr. Butler's
24 appraisal of the loss contained -- attached to Exhibit
25 10?

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1 MR. BENNETT: Object to form.
2 THE WITNESS: His appraisal is his
3 opinion.
4 Q (By Mr. Nealey) Okay. Do you have any criticism of his
5 methodology?
6 A I would need to --
7 MR. BENNETT: Object to form.
8 THE WITNESS: -- review it.
9 Q (By Mr. Nealey) Okay. I'm more than happy to have you
10 review it to identify anything you think is incorrect
11 about his methodology.
12 MR. BENNETT: I'll object form. She's
13 not here as an expert witness.
14 THE WITNESS: It's his opinion. I'm
15 unaware of where the percentages come from as well.
16 Q (By Mr. Nealey) Do you have any criticism of his
17 methodology or the way he calculated the loss?
18 A Again, I don't know how he determined his numbers other
19 than putting in random percentages.
20 Q So I take it that you don't have any criticism of his
21 methodology or how he reached his numbers?
22 A I don't know how he reached his numbers other than
23 putting in random percentages --
24 Q Okay.
25 A -- of what he felt were appropriate.

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1 Q Do you know how Audatex reached its numbers?
2 A It's based on the 10 percent.
3 Q Do you know where the 10 percent came from?
4 A As we discussed earlier, I was not part of that.
5 Q Okay. Okay. So I take it since you have no criticism of
6 Mr. Butler's appraisal of the loss, that you didn't
7 decide that it was erroneous; you just disregarded it in
8 deciding whether there was a diminished value loss or
9 not?
10 MR. BENNETT: Object to form.
11 THE WITNESS: That is not true.
12 Q (By Mr. Nealey) Well, what did you consider?
13 A Again, I don't know how these numbers were reached or how
14 he established the value, and it's a check system based
15 on a form letter as well. He also stated that there
16 was -- that the damage had been repaired properly --
17 Q Okay.
18 A -- back to pre-loss.
19 Q Okay. Does he say that the damage is repaired to
20 pre-loss?
21 A He states that it is high quality and visibly
22 undetectable repairs.
23 Q Where is that?
24 A Sorry. There's so many pages. I know it's here. He has
25 an asterisk in front of Number 2, "high quality and

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1 visibly undetectable repairs." It's on the second to the
2 last page.
3 Q Okay. And if you look at 93, you see his text there that
4 he's got. He -- "in this case, there are no readily
5 visible indications of prior damage. The repairs are,
6 for the most part, in distinguishable from the rest of
7 the automobile," correct?
8 A Which paragraph --
9 Q Do you see it?
10 A -- are you reading? I apologize.
11 Q Under "quality of repair."
12 A Okay. That is what it says.
13 Q Okay. Okay. And you notice that that is a different
14 level of repair than on what you were looking at on Page
15 106 of pre-loss condition, right?
16 A It is Number 2, and that's what this says.
17 Q Okay.
18 A It says the same thing.
19 Q And Level 1 is pre-loss condition, right?
20 A That's what that says.
21 Q So you would understand, looking at the level of repairs
22 and what he says, is that this vehicle was not in
23 pre-loss condition, but, instead, it had high quality
24 repairs, which is, he said in his text, "for the most
25 part are indistinguishable from the rest of the

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1 automobile. The repairs have been completed to the best
2 of human ability and that there are no readily visible
3 defects or deficiencies," correct?
4 A I will disagree. It's in contradiction to what his shop
5 says when they were doing the repairs.
6 Q Okay. Well, his DV report doesn't say the vehicle is in
7 its pre-loss condition?
8 A But decisions were made to repair the vehicle based on
9 conversations with his shop that it would be to pre-loss
10 condition and they were --
11 Q Okay.
12 A -- contradicting --
13 Q Okay.
14 A -- this report.
15 Q And, in fact, if we look at Exhibit 9, which is actually
16 the letter you sent to Ms. Bower, you don't say that the
17 vehicle is in its pre-loss condition; you say that the
18 damages were properly repaired, right?
19 A Yes. It says "properly repaired."
20 Q Do you equate a vehicle being properly repaired with it
21 being in its pre-loss condition?
22 A It can mean that.
23 Q Okay. So when you wrote "properly repaired," you meant
24 that the vehicle had been repaired to industry standards,
25 correct?

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1 **A Had been repaired to industry standards, and per this**
2 **report, it was an unrecognizable repair.**
3 Q Okay. But according to the report, not pre-loss?
4 **A According to the conversation with the shop, they were**
5 **going to make it pre-loss, and their reports contradicted**
6 **each other, and they're both owned by the same person.**
7 Q Now, you took this loss and you roundtabled it; is that
8 correct?
9 **A Yes, sir.**
10 Q I'd like to just ask you a little -- a couple of things
11 about the file and mark the -- Exhibit 14 is a note that
12 was added that was routed to Mr. Jackson, but it was
13 created by you.
14 (Exhibit No. 14 marked for
15 identification.)
16
17 Q (By Mr. Nealey) What do you mean by this note?
18 **A This is the my note letter Mr. Jackson know that as a**
19 **result of my physical inspection of the vehicle, I did**
20 **not feel the damages were consistent with a hit and run.**
21 Q What did you feel they were consistent with?
22 **A Striking a fixed objection.**
23 Q Okay. Did that impact the decision by American Family
24 that this was a UIM claim?
25 **A It impacted our decision on whether there was a UIM**
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1 **claim.**
2 Q Okay. And you found this was a UIM claim, right?
3 **A Mr. Jackson found it was a UIM claim.**
4 Q Okay. So American Family, despite your note, made a
5 decision, as a company, that it was a UIM claim?
6 **A They made a business decision.**
7 (Exhibit No. 15 marked for
8 identification.)
9
10 Q (By Mr. Nealey) Exhibit 15 is a letter from Mr. Jackson
11 to Ms. Bower that indicates that, quote, "We received
12 your paperwork for diminished value on your vehicle. I
13 will send the claim over to the property damage adjuster,
14 as they will be the one working on the claim with you."
15 I take it that the property damage adjuster they're
16 referring to is you in this case?
17 **A Correct.**
18 Q Okay.
19 **A At this point, I don't believe that it had actually --**
20 **I'm not sure if it had been assigned to me or not at that**
21 **particular --**
22 Q Okay. And is it the usual practice at American Family
23 that to the extent someone raises a diminished value
24 claim to assign it to the adjuster who actually went out
25 and appraised the vehicle's physical damage at the time?
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1 **A No.**
2 Q Okay. What is the practice? Who keeps these things or
3 handles them?
4 **A At the time, they were going to senior adjusters, and I**
5 **had a senior adjuster title.**
6 Q Okay. So diminished value doesn't go to the person who
7 looked at the car; it goes to a senior adjuster?
8 **A Not necessarily always. Sometimes it is the person who**
9 **looked at the car.**
10 Q Okay. But there is no view within American Family that
11 the person who handles the DV claims needs to be the
12 person who actually looked at the car?
13 **A No.**
14 Q Okay. So you've routinely handled diminished value
15 claims where you've never seen the vehicle?
16 **A That is correct.**
17 Q And you make a decision as to the diminished value based
18 upon the contents of the file, which would be the
19 estimates and then any photographs thereof, right?
20 **A Yes. It allows me to look at everything and see**
21 **everything in its entirety.**
22 Q Okay. Okay. And you don't feel a need in those
23 circumstances that you go personally see the vehicle
24 before making a decision?
25 **A I may need to.**

1 Q And when the photographs are taken, those are photographs
2 taken of the vehicle in its accident condition, right?
3 **A Sometimes.**
4 Q Okay. Meaning that -- that you'll actually make a
5 decision on diminished value where you haven't seen the
6 car and you have photographs of the vehicle in its
7 accident condition and then disassembled, but without
8 having a complete set of vehicles showing the repair work
9 after it's done, right?
10 MR. BENNETT: Object to form.
11 THE WITNESS: If there's a concern
12 that we need to reinspect the vehicle, we will.
13 Q (By Mr. Nealey) Okay. I understand that, but you
14 routinely handle diminished value claims where you look
15 at the file and the file will have the repair estimates;
16 they'll have pictures of the damaged areas of the
17 vehicle, but they will not have pictures of the vehicle
18 after it's been repaired, right?
19 **A Sometimes there are photos after the vehicle has been**
20 **repaired.**
21 Q And sometimes they're not, right?
22 **A Sometimes.**
23 Q In fact, frequently there aren't copies of the --
24 photographs of the vehicle that are taken after it's been
25 repaired?
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1 **A It happens both ways.**
 2 Q Okay. And you've handled diminished value claims where
 3 you have pictures showing the area of damage and you get
 4 the repair estimate but you don't have post-repair
 5 photographs, right?
 6 **A And I have handled claims the other way as well.**
 7 Q Okay. And you've paid claims for diminished value where
 8 you haven't inspected the vehicle and you don't have any
 9 photographs of the post-repair work on the car, right?
 10 **A Yes. We have paid those.**
 11 Q And you'll pay them based upon the Audatex system,
 12 correct?
 13 **A No. We'll pay them based on whatever is presented to us**
 14 **by the customer and our review of the Audatex system and**
 15 **taking all these other things into account to make our**
 16 **decision as to whether we feel there is diminished value,**
 17 **and then we'll settle off of what we feel is appropriate.**
 18 Q Well, let me ask another question here.
 19 To the extent that the Audatex system shows
 20 diminished value, do you pay that?
 21 **A Not always.**
 22 Q So there's circumstance where the Audatex system shows
 23 you there's diminished value but you don't pay it?
 24 **A Because there could be other factors that are not**
 25 **included in the Audatex system.**

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1 Q What would be the circumstances where the Audatex system
 2 would show diminished value and you wouldn't pay it?
 3 **A There are circumstances of extensive prior losses on the**
 4 **vehicle, circumstances of interior damage to the vehicle**
 5 **that's not addressed on the Audatex system.**
 6 Q So I want to go slowly here.
 7 So extensive prior damage to the vehicle. Okay.
 8 **A As far as prior claims that were repaired, just to**
 9 **clarify that.**
 10 Q Okay. Prior repair claims. Okay. Uh-huh.
 11 **A Interior damage to the vehicle.**
 12 Q Uh-huh.
 13 **A There could be a myriad of other reasons that -- that we**
 14 **would -- again, each one is looked at on its own**
 15 **individual basis. We do not generalize.**
 16 Q What other circumstances, other than you having some
 17 proof of extensive prior damage to the vehicle, prior
 18 reported claims or interior damage to the vehicle, might
 19 you not pay diminished value when the Audatex showed that
 20 you can tell me?
 21 **A We can't get ahold of the customer.**
 22 Q Okay. Anything else?
 23 **A Those are the ones that come to my mind at the moment.**
 24 Q Okay.
 25 **A There could be more later.**

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1 Q Okay. So I would like to take one of these.
 2 Obviously, if you can't get ahold of the customer,
 3 you know, that's just the end of the matter, right?
 4 **A They can respond to our letter, and we'll reopen it if**
 5 **they call us.**
 6 Q Okay. So putting aside not being able to make contact
 7 with the client, why, if there was extensive interior
 8 damage to the vehicle, would you pay -- would you not pay
 9 the loss if Audatex showed it for damage to the exterior
 10 of the vehicle?
 11 **A Because Audatex is a tool and it's only just giving us**
 12 **that idea of -- it's not taking into account everything.**
 13 **And if the interior is missing or has extensive prior**
 14 **damage in it, it's not asking us that question. There**
 15 **could be outlying factors that impact our decision.**
 16 Q Well, Audatex is looking at the extensive of damage to
 17 the vehicle's paint, body, and structural systems, right?
 18 **A It also asks about prior damage.**
 19 Q Okay.
 20 **A But its body -- the ratings are on the body category, if**
 21 **you look at that other document that we don't have.**
 22 Q Yes. Agreed. Understand.
 23 So Audatex is concerned about damage.
 24 In determining if there's some diminished market
 25 value on the vehicle, Audatex is looking at the existence

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1 of damage to the body's frame, structure, paint or body,
 2 right?
 3 **A Audatex primarily looks at that.**
 4 Q Okay. And then it also looks at whether there's prior
 5 damage to the vehicle's frame, structure, body, or point,
 6 right?
 7 **A Yes.**
 8 Q Okay. And Audatex doesn't concern itself with whether
 9 the vehicle has unrelated mechanical issues, right?
 10 **A Audatex does not.**
 11 Q Okay. And Audatex doesn't factor in whether there's
 12 unrelated issues with the vehicle's interior, right?
 13 **A It does not factor that in.**
 14 Q Okay. Why do you think -- if Audatex decides, based upon
 15 the vehicle's pre-loss value and the fact that it has had
 16 damage to the -- to the body, paint, frame, or structure
 17 of the vehicle and it has a reduction in value, why would
 18 you think that reduction in value as a result of the
 19 damage to the outside of the vehicle would not exist as a
 20 result of prior interior damage?
 21 **A I did not create the Audatex methodology for what they**
 22 **would consider and what they didn't.**
 23 Q I'm asking you why, if Audatex, looking just at the
 24 exterior of the vehicle, decides that there's a reduction
 25 in the vehicle's market value as a result of the accident

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27 (Pages 105 to 108)

1 and repair, why you would think that -- that reduction in
 2 market value would not exist because the vehicle had had
 3 some form of interior damage to it?
 4 **A It may.**
 5 Q Apart from -- why?
 6 **A Excuse me. It may exist.**
 7 Q Well, you said the only time that you might not pay,
 8 based upon the Audatex, is if you had interior damage.
 9 My question is, why would interior damage, repaired
 10 or unrepaired, why would it mean that what Audatex shows,
 11 which is the reduction of the vehicle's value as a result
 12 of exterior damage, no longer exists?
 13 MR. BENNETT: Object to the form.
 14 THE WITNESS: It's not the only time I
 15 said we wouldn't pay.
 16 Q (By Mr. Nealey) I realize that. I'm breaking them down,
 17 but I'm ask you about just that scenario. You gave me
 18 two -- you gave me three, but two scenarios you may not
 19 pay on Audatex, and I'm asking you what is your basis as
 20 a -- as a -- I mean, you're a manager for Am Fam, at this
 21 point, right?
 22 **A Yes, sir.**
 23 Q Okay. As a manager for Am Fam, what is your basis to
 24 believe that if the Audatex system says that the vehicle
 25 has less value as a result of damage to its exterior,

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1 which has been repaired, its frame, structure, paint, or
 2 body work, what's your basis to think that that damage
 3 would no longer exist as a matter of market because it
 4 had interior damage?
 5 MR. BENNETT: Object to form.
 6 THE WITNESS: There are other factors
 7 that can be taken into whether the vehicle has a loss in
 8 value besides what's just in that Audatex report.
 9 Q (By Mr. Nealey) I'm not denying you can't take them into
 10 account. I'm asking you why that would be relevant.
 11 **A Well, if there's already a loss in value due to something**
 12 **that's not addressed on that report, it can be addressed**
 13 **outside of that report.**
 14 Q (By Mr. Nealey) And, in fact, any reduction in value of
 15 the vehicle as a result of interior damage would be in
 16 addition to the reduction due to the damage to the
 17 exterior of the vehicle, right?
 18 **A It would be something we would take into consideration on**
 19 **the overall condition of the car.**
 20 Q Meaning that if Audatex said there was \$1,000 worth of
 21 diminished value as a result of the damage to the
 22 exterior of the vehicle, if the issues with the interior
 23 reduced the value of the vehicle by \$1,000, then that
 24 would be \$1,000 on top of what Audatex showed, right?
 25 MR. BENNETT: Object to form.

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1 THE WITNESS: I do not know. It's not
 2 in that tool, so I do not know how it would be
 3 calculated.
 4 Q (By Mr. Nealey) Okay. Well, they're a separate loss,
 5 right? You get some reduction for the damage to the
 6 outside of the vehicle, and then you get any reduction
 7 that you would have from the damage to the interior of
 8 the vehicle, right?
 9 MR. BENNETT: Object to form; calls
 10 for a legal conclusion.
 11 THE WITNESS: It's a pre-existing
 12 condition on the vehicle showing the overall condition of
 13 that car if that car was to be for sale.
 14 Q (By Mr. Nealey) And how does that preexisting condition
 15 have anything to do with the additional reduction that
 16 comes from the damage to the exterior?
 17 **A Because it could be that that's impacting the value, not**
 18 **the accident that occurred.**
 19 Q Impacted what value?
 20 **A The value of the vehicle that the person says that**
 21 **they've lost.**
 22 Q Okay. But Audatex is giving you a post-repair value and
 23 a loss entirely apart from any damage to the interior,
 24 right?
 25 MR. BENNETT: Object to form.

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1 THE WITNESS: They're giving us what
 2 they say based on those couple of questions. It's a
 3 tool. It's an opinion. It's a tool.
 4 Q (By Mr. Nealey) Okay. Now, the second circumstance, you
 5 said you might not pay under the Audatex system is when
 6 you said, if I'm correct, that you have proof of
 7 extensive prior damage to the vehicle and prior claims in
 8 the area of the accident; is that correct?
 9 **A No, not just in the area of the accident but to the**
 10 **history of the vehicle.**
 11 Q So you're operating under what might be called a stigma
 12 theory, right?
 13 **A If you want to call it that. There was already a**
 14 **diminishment of value --**
 15 Q Okay.
 16 **A -- prior to this loss.**
 17 Q Okay. And so when you're making these assumptions and
 18 you're not paying, you're assuming it's a stigma loss,
 19 i.e., it has nothing to do with whether the damage
 20 overlaps or doesn't overlap. It has to do with the fact
 21 of whether it's had an accident with no other
 22 considerations?
 23 **A It has to do with the information provided to us by the**
 24 **customer and how they feel -- excuse me, felt that they**
 25 **did lose value.**

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1 Q Okay. Well, let me give you an example. You've got an
 2 Audatex, and it shows a \$2,000 loss in value as a result
 3 of the body, frame, structural, and paint damage to the
 4 vehicle, okay, Audatex shows \$2,000. And the damage on
 5 the -- that Audatex is considering is all in the front of
 6 the vehicle, okay, the hood, the fenders, the driver and
 7 passenger side door, the front bumper, and -- and the
 8 customer has told you that -- at some prior point, that
 9 they had had a -- an impact in the rear and that they'd
 10 had their bumper replaced --
 11 **A Okay.**
 12 Q -- entirely different areas of the vehicle, are you going
 13 to pay the Audatex estimate, or are you not going to pay
 14 it?
 15 MR. BENNETT: Object to form;
 16 incomplete hypothetical.
 17 THE WITNESS: It depends. There's
 18 more to finding -- each claim is situational. We do not
 19 generalize and make the same decision on every claim. We
 20 take what we have and make the right decisions.
 21 Q (By Mr. Nealey) Okay. Well, I'm asking you, you talked
 22 about you wouldn't pay when there's evidence of extensive
 23 prior damage to the vehicle was shown in prior claims,
 24 and I'm giving you a hypothetical. You've got a
 25 situation where Audatex says \$2,000 of diminished value

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1 as a result of the extensive damage to the front of the
 2 car and you are presented with evidence that this vehicle
 3 has been hit in the back and that the bumper cover has
 4 been replaced. Are you going to pay that loss or are you
 5 not going to pay that loss?
 6 **A I don't know.**
 7 Q Well, would you consider a -- a prior -- do you have any
 8 evidence to show that a prior impact that would be in a
 9 separate area of the vehicle would take away the
 10 diminished value shown by Audatex?
 11 **A I'm sorry. The -- if the --**
 12 Q Can you point me to anything that would support a
 13 conclusion by you that -- that if Audatex showed a loss
 14 on the claim that damage elsewhere in the vehicle would
 15 mean that that loss did not exist?
 16 **A Audatex asks if there's prior damage to the vehicle.**
 17 Q So Audatex already takes it into account?
 18 **A It asks if there's prior damage, not prior losses.**
 19 Q What's the distinction you're making?
 20 **A Repaired versus unrepaired.**
 21 Q So you -- Audatex is, in your opinion, just looking at if
 22 it's unrepaired damage?
 23 **A Audatex is looking at unrepaired damage.**
 24 Q Okay.
 25 MR. BENNETT: It's got -- finish your

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1 line of questioning. I don't care. It's just that it's
 2 12:40, so sometime working on a break.
 3 MR. NEALEY: We can take a quick
 4 break. I'm going to try to get us out of here by 3.
 5 MR. BENNETT: Yeah. And I'm not
 6 trying to interrupt you, if you want to complete.
 7 MR. NEALEY: No, no, it's good. I've
 8 got a couple of more questions, and then we'll go.
 9 MR. BENNETT: Okay.
 10 Q (By Mr. Nealey) So as far as the creators of the Audatex
 11 system are concerned, the only thing that matters is if
 12 there's unrepaired damage in an area, not if the vehicle
 13 has prior repair damage elsewhere on the vehicle?
 14 **A You would need to ask them their philosophy behind that.**
 15 Q Okay.
 16 **A That is their opinion.**
 17 Q And I'm asking you if you have any information, studies,
 18 texts, sources, anything you can point me to, as a
 19 manager at Am Fam, that would suggest that if you have
 20 prior repair damage in an unrelated area of the vehicle,
 21 totally different area of the vehicle, my hypothetical
 22 about damage to the bumper cover, that the Audatex
 23 numbers are no longer valid?
 24 **A I can point you to the fact that cars are on the market**
 25 **for sale with multiple impacts on them. What the**

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1 **customer pays for them, some will pay the full asking.**
 2 **Some will reduce it down to a prior accident. It's**
 3 **customer by customer, situation by situation.**
 4 Q Does the market pay less for vehicles based upon the
 5 extensiveness of damage, or is it always the same?
 6 **A That's customer preference.**
 7 Q Okay. Do you have any basis to support that opinion?
 8 Have you ever studied the market for used cars?
 9 **A That is a basis of being a consumer and also basis of**
 10 **talking with dealerships while handling diminished value**
 11 **claims.**
 12 Q Well, let me give you a hypothetical then: You've got
 13 two cars. You've got to buy one for your family. You
 14 get two Ford Tauruses side by side. And one of them has
 15 a -- when you look at it, you can tell that the rear
 16 bumper cover has been repainted, so, you know, not the
 17 original bumper cover. And the other one, when you look
 18 at it, you see that the hood and the fenders and the
 19 front doors have been redone, and when you look inside,
 20 you can see that the radiator support has been replaced.
 21 There's been some work on it the frame rails, which
 22 car -- if everything else is equal about those cars,
 23 which car are you going to buy?
 24 MR. BENNETT: Object to form.
 25 Q (By Mr. Nealey) Choice of the two.

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1 **A I would -- I would want to see them. I wouldn't make a**
2 **decision based on this, and I would buy either one of**
3 **them.**
4 Q Would you pay the same amount of money for those two
5 cars?
6 **A It depends on the quality of the repair that was done on**
7 **either car.**
8 Q The repair is proper on both of them.
9 **A Then yes.**
10 Q You would pay the same amount for the car that had been
11 hit in the rear and had its bumper cover replaced as you
12 would the car that has frame rails replaced and
13 structural members replaced in the front and the whole
14 front of the car has been repainted?
15 **A If --**
16 Q You would pay the same?
17 **A If it had been properly repaired, as you just stated it**
18 **was --**
19 THE COURT REPORTER: Can you slow down
20 just a little bit?
21 THE WITNESS: Oh, I'm sorry.
22 THE COURT REPORTER: It's okay.
23 THE WITNESS: If it had been properly
24 repaired, as you stated that it was, I would.
25 Q (By Mr. Nealey) Pay the same amount?

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1 **A Uh-huh.**
2 MR. NEALEY: Okay. We can take a
3 break.
4 MR. BENNETT: All right. 30 minutes?
5 MR. NEALEY: Sure.
6 (Recess from 12:44 p.m. to
7 1:36 p.m.)
8
9 Q (By Mr. Nealey) Ms. McNally, I would like you to look at
10 Exhibit 9 again, which is your letter. I think you've
11 got it.
12 **A Yeah.**
13 Q Yeah.
14 **A It's here somewhere. Here it is.**
15 Q And I take it it's fair to say that this is your denial
16 of the diminished value claim to Ms. Bower; is that
17 correct?
18 **A Yes.**
19 Q Okay. What explanation, if any, regarding applicable law
20 did you provide to Ms. Bower in denying her claim?
21 **A There is no applicable law information because there is**
22 **no applicable law in regards to diminished value.**
23 Q Okay. So you denied her claim not on the basis that it
24 wasn't -- wasn't recoverable under Washington law; you
25 denied it on a factual basis?

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1 **A We denied it based on our decisions of everything that we**
2 **had in front of us at the time.**
3 Q Okay. And when we look at an explanation in relation to
4 the facts of her claim as to the denial, I take it
5 that -- that the basis for your denial of her claim on a
6 factual basis was your statement that the vehicle was
7 properly repaired and there were no indications that
8 repairs occurred?
9 **A Correct.**
10 Q Okay. So that constituted the grounds for your factual
11 denial of her claim?
12 **A We also did not feel that if a loss had occurred it**
13 **necessarily sustained a loss in value.**
14 Q Okay. And what was the basis for that?
15 **A That was our opinion.**
16 Q Well, what's the basis for that though?
17 **A Our opinion.**
18 Q Okay. Do you have anything you can point to that could
19 document or analysis, something in writing?
20 **A Just because a vehicle has been in an accident doesn't**
21 **necessarily mean someone is going to pay less for the**
22 **vehicle.**
23 Q Okay. And you don't have any market surveys or anything
24 like that you can point to?
25 **A That is our opinion.**

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1 Q "Our," being American Family's?
2 **A That was mine and my manager and the other person that**
3 **was roundtabled, Candace Chapman, our opinion at the**
4 **time.**
5 Q Okay. And you sent this denial letter without you,
6 yourself, having ever looked at the repairs to Ms.
7 Bower's vehicle; is that correct?
8 **A I did not look at the repairs to the vehicle, no.**
9 Q Okay. You saw the vehicle in its damaged condition when
10 you adjusted the loss initially, right?
11 **A Yes.**
12 Q Okay. And you did not have any photographs of the
13 repaired vehicle in your possession when you denied the
14 claim, right?
15 **A I would need to look at the file photos.**
16 Q Okay. But -- and if you don't know the answer -- I'm not
17 sure I do either, but you sometimes deny claims for
18 diminished value when you have photographs and you
19 sometimes deny them when you don't have photographs of
20 the repaired vehicle, correct?
21 **A We will pay some claims with photos, and we will pay some**
22 **claims without photos.**
23 Q Maybe I can -- I don't want to mark it all, but here is a
24 complete, I think, copy, and the photographs are all
25 printed out here. And you're welcome to look through

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30 (Pages 117 to 120)

1 these, but I think they're all of the repair -- the
 2 vehicle being repaired. I'm happy to be corrected if I'm
 3 incorrect.
 4 **A These are all damage or in process photos.**
 5 Q Okay.
 6 **A And Mr. Butler did not submit any in his report either.**
 7 Q Okay. Okay. So to summarize, you were comfortable
 8 making a decision on whether the vehicle had diminished
 9 value or not and denying the claim without having seen
 10 the vehicle in its repaired condition and without a --
 11 without having photographs of the vehicle in its repaired
 12 condition?
 13 **A According to Mr. Butler's report that was submitted by**
 14 **Ms. Bower, the vehicle has been repaired properly and**
 15 **there was undetectable repairs.**
 16 Q Okay. Have you been trained on the Washington
 17 Administrative Code provisions which relate to auto
 18 physical damage claims?
 19 **A I have read them.**
 20 Q Okay. So you're familiar if I refer to what's called the
 21 WAC?
 22 **A I can reference it as the WAC, but I would need to**
 23 **physically see them in front of me if you're asking about**
 24 **a specific one.**
 25 Q I understand.

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1 As to that, in a general sense, you recognize that
 2 you and American Family have an obligation to fully
 3 disclose pertinent benefits, coverages, and other
 4 provisions of insurance policies, correct?
 5 **A Yes.**
 6 Q And the benefits that you get under an insurance policy
 7 are the losses that can be paid, right?
 8 MR. BENNETT: Objection; calls for a
 9 legal conclusion.
 10 THE WITNESS: There are various things
 11 that can be paid under the damages and the coverages
 12 listed in the policy.
 13 Q (By Mr. Nealey) So the losses that can be paid are the
 14 coverages and benefits you can obtain, right?
 15 **A There are some benefits listed in the policy.**
 16 Q Okay. And the losses that are covered under the policy,
 17 those are the benefits that you can obtain, right?
 18 MR. BENNETT: Object to the form;
 19 calls for a legal conclusion.
 20 THE WITNESS: Again, there are some
 21 things that are specifically stated in the policy, and
 22 there are others that are not.
 23 Q (By Mr. Nealey) And there are some things -- losses that
 24 are covered under the policy that are benefits you can
 25 get under the policy that are not specifically listed in

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1 the policy, right?
 2 MR. BENNETT: Object; calls for a
 3 legal conclusion.
 4 THE WITNESS: It says that we will
 5 repair the vehicle.
 6 Q (By Mr. Nealey) Okay. Well, let me give you an example:
 7 Under the Am Fam policy and the way you've construed it,
 8 you cover towing on vehicles, right?
 9 **A If they have the applicable endorsement.**
 10 Q Okay. Well, in a UIM context, you pay for towing, right?
 11 **A We'll pay for it as part of the contract to get the**
 12 **vehicle out of the shop the same we would pay for it -- a**
 13 **vehicle in any other loss.**
 14 Q Okay. But the policy doesn't say that you'll pay for
 15 towing under the UIM section, right?
 16 **A If the vehicle has been involved as part of a loss, we**
 17 **will remove the vehicle as part of the claim.**
 18 Q Okay. But the policy doesn't say that, right?
 19 **A It does not.**
 20 Q Okay. But you cover that because that's a loss that
 21 flows from the fact that there's been property damage to
 22 the vehicle and, therefore, you'll pay it under the
 23 coverage, right?
 24 **A If the customer tells us their vehicle is not drivable.**
 25 Q Okay. So put another way: One of the benefits or one of

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1 the coverages you get under uninsured motorist is the
 2 fact that you'll pay for towing, even though it's not
 3 listed in the policy, right?
 4 MR. BENNETT: Object to form. It
 5 calls for a legal conclusion, if you're analogizing it to
 6 the WAC.
 7 THE WITNESS: If we're made aware of
 8 the towing and the need for it and how it's related to
 9 the loss, we'll pay for it.
 10 Q (By Mr. Nealey) Okay. And that's because it's part of
 11 the coverage and that's one of the benefits under the
 12 policy, right?
 13 MR. BENNETT: Same objections.
 14 THE WITNESS: If it's needed as a part
 15 of the claim and as a result of somebody just wants their
 16 vehicle towed out of convenience, we would consider that
 17 and look at it separately.
 18 Q (By Mr. Nealey) Okay. So to put it another way: If
 19 the -- if under uninsured motorist, if the towing flows
 20 out of the fact of property damage to the vehicle, then
 21 you'll cover it, right?
 22 **A If it's a direct result that the vehicle cannot be driven**
 23 **to the shop, we will move the vehicle to the shop.**
 24 Q Okay. So if I'm understanding what you're saying, you
 25 cover under -- uninsured motorists, whatever comes

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1 directly out of the fact that there's been property
 2 damage to the vehicle; is that correct?
 3 **A I'm sorry. Can you repeat your question?**
 4 **Q** Okay. If somebody has an accident under the uninsured
 5 motorist coverage and the vehicle cannot be driven, okay,
 6 then the vehicle -- because it's been in an accident,
 7 it's been damaged, it's sustained property damage,
 8 correct?
 9 **A The fact that it cannot be driven is why we would tow it.**
 10 **Q** Okay. Because that is a loss that flows from or damage
 11 that flows from the fact that it's been in an accident,
 12 right?
 13 **A The fact that it's been in an accident does not mean that**
 14 **it can't necessarily be driven.**
 15 **Q** Okay. Well, the severity of the property damage of the
 16 vehicle after an accident, if it can't be driven and it
 17 needs to be towed, you'll pay for it because those are --
 18 are payments that are triggered from the fact that the
 19 car has been in an accident and it's not drivable, right?
 20 **A We will move the vehicle to the shop for the repairs if**
 21 **we are going to repair the vehicle or pay up to the**
 22 **actual cash value of the vehicle.**
 23 **Q** Okay. Okay. Does American Family make any standardized
 24 disclosures in the State of Washington as to diminished
 25 value in uninsured motorist cases?

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1 **A Standardized disclosure as -- is there a specific**
 2 **disclosure --**
 3 **Q** Yeah.
 4 **A -- you're asking me about?**
 5 **Q** Yes. Do you make a disclosure to people as to that one
 6 of the coverages, benefits, or other pertinent provisions
 7 under the UIM policy is that they may receive uninsured
 8 payments for any loss due to diminished value?
 9 **MR. BENNETT:** Object to form on the
 10 premise of the question.
 11 **THE WITNESS:** No, because it's not a
 12 coverage listed in the policy. If a customer asks us
 13 about it, we will disclose and answer their questions.
 14 **Q** (By Mr. Nealey) Okay. Well let me ask, if somebody has
 15 a non-drivable loss -- I mean a non-drivable vehicle
 16 after an accident under the uninsured motorist coverage,
 17 will you just have them meet the towing charge, or do you
 18 tell them, "Oh, no, we pay towing," if you know the
 19 towing took place?
 20 **MR. BENNETT:** Object to form.
 21 **THE WITNESS:** There is times that we
 22 need to determine if there's even coverage for the loss,
 23 and sometimes that has to occur first so a customer can
 24 be put on notice that we may not reimburse the towing.
 25 **Q** (By Mr. Nealey) Okay. But at the moment you decide that

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1 there's coverage, you tell them that you'll pay for the
 2 towing, correct?
 3 **A Within reason, and we will not pay for multiple tows,**
 4 **again, if the vehicle is to be not drivable as a result**
 5 **of the accident.**
 6 **Q** Okay. But my question to you is that -- that if you have
 7 an uninsured motorist loss and you've determined it to be
 8 a uninsured motorist loss and the person has their
 9 vehicle towed as part of the repair because it's not
 10 drivable, do you wait for them to come and say, "Oh, I've
 11 had my car towed. Will you pay it," or once you know
 12 it's an uninsured motorist claim, do you then say, "Yes,
 13 we'll pay for your tow"?
 14 **A If the customer comes to us and discloses that their**
 15 **vehicle is not drivable, and, at that point, we make the**
 16 **applicable decision, but it's based on what the customer**
 17 **comes to us with.**
 18 **Q** Well, if you have a situation where somebody has had an
 19 accident that you've determined is an uninsured motorist
 20 claim and that their vehicle had to be towed, it was
 21 towed into the shop, do you just not say anything, or --
 22 or as part of settling the claim, do you then say, "Oh,
 23 and we'll cover the towing"?
 24 **A That is part of the customer making their claim for**
 25 **damages with us, and that is a port of their claim that**

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1 **they're making to us.**
 2 **Q** Well, do you pay it without them asking and tell them
 3 about it, or do you only pay towing when the customer
 4 comes to you and says, "I would like you to cover my
 5 towing"?
 6 **A If we don't know about it, we can't pay for it.**
 7 **Q** Well, I'm just saying if you know about it. I mean, you
 8 know about the towing. You know that it was towed
 9 because you're the adjuster; you go and you look at the
 10 car. You know it was towed in there. Do you then say to
 11 the customer, "Oh, and your car was towed in here. We
 12 cover that under UIM," or do you wait for them to say
 13 something to you?
 14 **A At that point, they've made their claim with us and**
 15 **they've told us, like you said. They've incurred a tow**
 16 **bill. They let us know or the shop will let us know who**
 17 **is providing that, and we'll review their claim.**
 18 **Q** Well, my question is a little different. My question is,
 19 you go out and look at a vehicle. You know the vehicle
 20 is not drivable and it's an uninsured motorist claim.
 21 It's been determined by American Family it's uninsured
 22 motorist. Do you then say, "Tell us what the towing is
 23 and we'll pay it," or do you not pay that and wait until
 24 the insured raises the issue with you?
 25 **A There is a conversation with the customer because we have**

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1 to have their permission to move the vehicle anyway, so
 2 they've already made us aware that their vehicle is in a
 3 tow yard or not drivable. That usually occurs when a
 4 claim is reported to us as part of their initial claim.
 5 Q So basically what happens is the -- the insured will say,
 6 "Oh, yes, and I have to have my car towed," and the
 7 moment they say the word "tow," then you say you'll cover
 8 that or won't cover that?
 9 A If they tell us that their vehicle is not drivable,
 10 they've presented their claim from what they're looking
 11 for from us.
 12 Q Okay. Well, how about a situation where you are the
 13 adjuster and you're the field adjuster and you're asked
 14 to go look at a car and you go look at the car and the
 15 car is at body shop XYZ and you know the car had to be
 16 towed there because it's not drivable? Do you then say
 17 to the customer, "Tell us what your towing bill is and
 18 we'll pay. It's covered," or do you just not say
 19 anything and they don't get it if they don't raise the
 20 issue?"
 21 A It's very rare -- excuse me, it's very rare a car was
 22 towed into a shop and paid for by the customer. It's
 23 paid for the shop at the time of the tow and the shop
 24 presents it to us.
 25 Q Oh, the shop presents it to you.

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1 I'd just like to ask, if the shop doesn't present it
 2 to you and the customer paid to have it brought in -- say
 3 it's at night, late at night and they call the tow truck
 4 and the tow truck brings the car in and drops it off in
 5 front of the body shop, which sometimes happens, and the
 6 customer has paid the towing bill and you know it's towed
 7 in there, do you then say to the customer, "Give us your
 8 towing bill," or do you just let them eat it?
 9 A The customer will tell us that they have incurred a tow
 10 bill. And then at that point they have made their claim
 11 that they're seeking those damages.
 12 Q That's not my question. My question is, if the customer
 13 doesn't say anything to you but you, as in American
 14 Family, knows that they had the car towed and they paid
 15 for it, do you then raise it with them and tell them
 16 you'll cover it, or do you let them eat it?
 17 A If I know --
 18 MR. BENNETT: Object to form.
 19 THE WITNESS: If I know that there's
 20 been a tow, it's because they've already presented the
 21 claim that there's going to be a tow.
 22 Q (By Mr. Nealey) So you're unaware of any situations
 23 where -- where you know a tow occurred and you weren't
 24 told by the customer that a tow had occurred?
 25 A When the customer is providing us information about their

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1 vehicle at the initial contact or the assignment is being
 2 set up to move to us, that has already occurred by the
 3 customer saying where their vehicle is located.
 4 Q So, in essence, what you're telling me then, if I
 5 understand, is that the -- is that the customer says,
 6 "Oh, I had an accident. It was in, you know, Bothell,
 7 and my car is at XYZ shop in Woodenville, and then when
 8 you look at the car and you see it in Woodenville, you
 9 know it was obviously towed there and you ask them for
 10 whatever the tow charges were?
 11 A I don't know that it was necessarily towed there. They
 12 could have driven to Woodenville.
 13 Q No. I'm saying if the car is undrivable.
 14 A If it's undrivable, then, typically, again, the shop has
 15 already presented us with the bill.
 16 Q The shop doesn't present you with a bill. You know that
 17 the customer called and said, "I had an accident in" --
 18 "in Bothell and my car is sitting in a shop in
 19 Woodenville," and -- and you go in and you look at it and
 20 you know the car is not drivable, do you then raise the
 21 issue, of, "Oh, well, you get towing reimbursement?"
 22 A If I know that a customer has sustained a tangible loss,
 23 then I will address that.
 24 Q Okay. Even if they don't raise towing with you, you'll
 25 address it?

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1 A At that -- again, if the vehicle wasn't towed, there's
 2 nothing to address. Typically, the shop addresses it.
 3 There's oftentimes that Triple A tows the vehicle in
 4 because they happen to have Triple A coverage as well.
 5 They don't always have the vehicle towed through
 6 expecting reimbursement on a claim. There's not always a
 7 bill. If a customer suffered an out-of-pocket loss, they
 8 make their claim to us for reimbursement.
 9 Q And do you believe they've suffered a loss? Even if they
 10 don't tell you about towing, you'll raise the issue with
 11 them, right?
 12 MR. BENNETT: Object to form.
 13 THE WITNESS: If I have no reason to
 14 suspect there was an out-of-pocket bill, because that
 15 doesn't happen very often, then I will not ask, no.
 16 Q (By Mr. Nealey) And if you think there might be an
 17 issue, you'll raise it to them, right?
 18 A If the --
 19 MR. BENNETT: Object to form.
 20 THE WITNESS: If the shop tells me
 21 that the customer paid for a bill out of pocket -- again,
 22 this is the shop telling me that -- then I will ask the
 23 customer about it because, at that point, it's been
 24 raised to my attention.
 25 Q (By Mr. Nealey) Okay. Now, under the comprehensive and

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1 collision coverages, loss and use is covered, right?
 2 **A No.**
 3 Q It's not?
 4 **A Not unless you have a rental endorsement.**
 5 Q I'll mark as Exhibit 16 a copy of the policy that was
 6 produced in this matter.
 7 (Exhibit No. 16 marked for
 8 identification.)
 9
 10 MR. BENNETT: This is Christina
 11 Bower's?
 12 MR. NEALEY: Bryce Meyer's.
 13 Q (By Mr. Nealey) If you look under -- on page -- Bates
 14 No. 6 --
 15 **A I'm just making sure that this is a Washington policy.**
 16 Q It is.
 17 **A Sorry. I saw Minnesota on the front of it, so...**
 18 (Pause.)
 19 Q Yeah, that's okay. Right here, if you look, Policy No.
 20 WA is --
 21 **A That's what I was looking for. Thank you.**
 22 Q Yeah. Look on page -- Bates No. 2.
 23 If you look on Bates No. 6, it says, "Property
 24 damage means damage to or destruction of tangible
 25 property. This includes loss of its use."

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1 **A Where are you reading this at?**
 2 Q I'm reading it under Definition G, Page 3 of 8, which is
 3 Bates No. 6 right at the bottom.
 4 **A Page 6?**
 5 Q You're on Page 9?
 6 **A That's page -- oh, you're reading these numbers. I'm**
 7 **reading the page of the policy.**
 8 Q That's why I said Bates number.
 9 **A "Property damage means damage to or destruction of**
 10 **tangible property."**
 11 Q Including -- this includes loss of use?
 12 **A That's what it says.**
 13 Q Okay. So reading this, you would get loss of use under
 14 the comprehensive and collision coverages, right?
 15 **A No.**
 16 Q No? Why not?
 17 **A Because you need to have rental car coverage for that.**
 18 **That's not what the definition of comprehensive or**
 19 **collision are when you read further into the policy under**
 20 **car part damages.**
 21 Q Okay.
 22 **A There is loss of use available under comprehensive for a**
 23 **stolen vehicle. That is actually stated in the policy.**
 24 Q Okay. What in this policy do you think loss in use is
 25 not covered under comprehensive, inclusion of that

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1 language? What do you point to?
 2 **A The definition of comprehensive and collision.**
 3 Q This is under Part 2 of Bates No. 8?
 4 **A This is Page 8, Number A under the insuring agreement.**
 5 Q And what do you think is the language that excludes loss
 6 in use?
 7 **A The definition of loss means direct and accidental loss**
 8 **of or damage to your insured car and its equipment. In**
 9 **the definition of B under "additional definitions," it**
 10 **defines loss. Loss is direct damage. A rental car would**
 11 **be indirect damage.**
 12 Q Okay. Is that something you've been taught as an
 13 employee of Am Fam?
 14 **A That's the policy language.**
 15 Q Okay. But, I mean, you're not -- this is something
 16 you've been shown before your -- you've done before?
 17 **A I have verified the definition of loss in use in our**
 18 **policies and procedures, correct --**
 19 Q Okay.
 20 **A -- or I'm sorry, the definition of loss --**
 21 Q Okay.
 22 **A -- that section.**
 23 Q Okay. Good. Have you been provided with any guidance in
 24 your work within American Family on the case Mueller
 25 versus Farmers Insurance Company from the Washington

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1 Court of Appeals in Washington Supreme Court?
 2 **A I have not been provided any training by American Family.**
 3 Q Okay. So you've never read the Mueller versus Farmers
 4 opinions?
 5 **A I am aware of the court case, but I have not read it**
 6 **front to back.**
 7 Q What are you aware of? What have you been told about it?
 8 **A I, from my understanding, is that --**
 9 MR. BENNETT: Let me pause just one
 10 moment.
 11 If you've been told by Counsel --
 12 THE WITNESS: No.
 13 MR. BENNETT: -- then I would instruct
 14 you not to -- okay. Go ahead. Go ahead.
 15 THE WITNESS: Oh.
 16 MR. BENNETT: You said you've not been
 17 told by Counsel?
 18 THE WITNESS: Yeah. No. Sorry.
 19 MR. BENNETT: There's too many no's.
 20 THE WITNESS: What's going on here?
 21 Q (By Mr. Nealey) He's asking if legal counsel told you.
 22 If so, don't say. I'm not asking for legal counsel,
 23 apart --
 24 MR. BENNETT: So if I told you
 25 something about it, don't talk about it, you know, if

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1 in-house counsel did, but if it's just your own inquiry,
 2 you can go ahead and feel free to talk about it.
 3 THE WITNESS: Oh, yeah, no. This was
 4 just going to be what I was aware of. A first-party
 5 coverage under their collision coverage, it wasn't -- it
 6 wasn't stated that it was covered or not covered under
 7 their first party collision and comprehensive coverages.
 8 Q (By Mr. Nealey) Okay. Okay. And so you've never been
 9 given any guidance though on its -- its holdings impact
 10 on the payment of diminished value in the State of
 11 Washington or generally?
 12 A No.
 13 Q Okay. I'm going to mark as Exhibit 17 a page out of the
 14 Butler -- I mean the Bower claim file, which is Bates No.
 15 111.
 16 And I'd just like to ask you. This appears to be a
 17 payment log, and I just want to ask about the first item.
 18 It talks about Audatex and \$8.
 19 Is that a charge for using the diminished value
 20 software, or is that a general charge for using the
 21 Audatex system for valuing the loss.
 22 (Exhibit No. 17 marked for
 23 identification.)
 24
 25 THE WITNESS: That was the charge for

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1 running Audatex that we receive on every estimate we
 2 write.
 3 Q (By Mr. Nealey) Okay. So the \$8 charge would be on any
 4 case whether you run a diminished value assessment on it
 5 or not?
 6 A Correct.
 7 Q Okay. So it doesn't cost American Family anything more
 8 to run the Audatex diminished value tool on repair than
 9 it would not running it?
 10 A It -- we would pay an \$8 charge if we run it, but there's
 11 times we don't have to run Audatex if we paid off of a
 12 shop estimate.
 13 Q I understand.
 14 But every time that you, for instance, go out as an
 15 Am Fam adjuster, you always use the Audatex system and
 16 there will always be an \$8 charge, right?
 17 A Yes.
 18 Q Okay. Put another way, that \$8 isn't specific to just
 19 diminished value; it's paid on any claim using the
 20 Audatex system?
 21 A It's usage of Audatex.
 22 Q Okay. And then I'm going to mark as Exhibit 18 a copy of
 23 the notes section from the Bower claim. This looks like
 24 a single document. It was produced as a single document,
 25 and it's 17 pages. It's AM FAM_B-112 to 128.

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1 Is this at least your understanding a complete set
 2 of the notes that would have been documented to the file
 3 for Ms. Bower's claim?
 4 (Exhibit No. 18 marked for
 5 identification.)
 6
 7 THE WITNESS: From my understanding,
 8 yes.
 9 Q (By Mr. Nealey) Okay. And I would like to just direct
 10 you to Page 3 of 17.
 11 MR. BENNETT: One second. Could you
 12 give me the Bates again.
 13 MR. NEALEY: It's Bates No. 114.
 14 Q (By Mr. Nealey) And down here, there is a note that is
 15 dated 8/24/2011 at 3:28 p.m. CDT.
 16 Did you create that note?
 17 A Yes, I did.
 18 Q Okay. And I take it that this is what you wrote down
 19 after you had roundtabled the -- Ms. Bower's situation
 20 with your coworkers?
 21 A With my manager and a coworker.
 22 Q Okay. And you say, "Presented and roundtabled insured's
 23 DV demand with Candace Chapman and Bryce Hilden."
 24 So Bryce Hilden was your manager and Candace Chapman
 25 was a coworker?

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1 A Yes.
 2 Q Was there a reason why she was involved in this as
 3 opposed to somebody else?
 4 A At the time, we had scheduled roundtables once a month,
 5 and she also had claims on the calendar to be reviewed.
 6 Q Okay. So this is a more general roundtable than just Ms.
 7 Bower's claim?
 8 A Yes.
 9 Q Okay. And every time there's a DV, it's roundtabled,
 10 right?
 11 A Yes.
 12 Q Okay. Is it always roundtabled with a manager and
 13 somebody else, or can it just be roundtabled just between
 14 you and your manager?
 15 A It can be just me and the manager.
 16 Q Okay. And it says, "Based on damage to the vehicle and
 17 no structural damage, we do not feel that there is any DV
 18 on the IV."
 19 What does "IV" stand for?
 20 A Insured vehicle.
 21 Q Insured vehicle, okay.
 22 So I take it that, if I'm reading it right, if there
 23 had been structural damage in the vehicle, your decision
 24 would have been different?
 25 A We would have considered that structural damage. I don't

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35 (Pages 137 to 140)

1 know if the decision would have been different, but we
 2 would have taken that into our consideration.
 3 Q Okay. But, certainly, at least in the notes that you
 4 made contemporaneously with your meeting, you wrote that
 5 "based on damage to the vehicle and no structural damage,
 6 we do not feel there's any DV," right?
 7 A Based on my note in the file, it says that that is part
 8 of the reason why we did not feel there was a DV claim.
 9 Q Okay. Why did you point to the lack of structural damage
 10 in specific?
 11 A That's one of the items addressed on the Audatex tool.
 12 Q Okay. So you're really referring to the fact that
 13 Audatex bumped you out because you didn't have structural
 14 damage?
 15 A Just because there's no structural damage does not mean
 16 there isn't DV, and just because there is structural
 17 damage doesn't mean that there is DV.
 18 Q And then you said, "The quarter panel is riveted and
 19 adhered to vehicle."
 20 What does that mean?
 21 A That means there was no welding that occurred on this
 22 vehicle.
 23 Q If there had been welding, would you have looked at it
 24 differently?
 25 A It's possible. It probably would have been more in line

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1 with the structural damage.
 2 Q Okay.
 3 A It's just a note.
 4 Q Okay. Well, I'm trying to find out why you -- why you
 5 noted the fact of riveting as opposed to welding.
 6 A Because it's a less than basic process.
 7 Q Was the original quarter panel riveted on?
 8 A Yes.
 9 Q Okay. And that's because when you weld parts -- weld on
 10 a quarter panel, it weakens the metal in the area you've
 11 welded on, right?
 12 A It can.
 13 MR. BENNETT: Object to form.
 14 Q (By Mr. Nealey) Okay. So you're certainly aware that
 15 when you have to weld on a quarter panel or weld on
 16 structural parts, it's going to weaken the steel?
 17 MR. BENNETT: Object to form.
 18 THE WITNESS: It may not weaken the
 19 steel. Again, it's all situational.
 20 Q (By Mr. Nealey) Well, when you heat steel, it changes
 21 it's chemical composition, right?
 22 A And there are other components. It depends what all was
 23 replaced around it as well.
 24 Q (By Mr. Nealey) Okay. So you specifically noted on this
 25 repair anyway the fact that there hadn't been any welding

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1 involved on the repair, which might have weakened the
 2 steel, right?
 3 MR. BENNETT: Object to form.
 4 THE WITNESS: This is -- these are
 5 items and comments that are in line with the form that we
 6 went over earlier that had the just giving an overview of
 7 the claim. This is just a note form versus the check
 8 sheet.
 9 Q (By Mr. Nealey) Okay. And then you notice the, "Per the
 10 convo," which I assume is "conversation," "with Jeff at
 11 the shop when the decision was made to RR the quarter
 12 panel versus RPR" -- I take it that is remove and repair
 13 the quarter panel versus repair it?
 14 A No. That's remove and replace --
 15 Q Remove and replace.
 16 A -- the quarter panel versus repair.
 17 Q Okay -- "the shop adv" -- that's "advised"?
 18 A Yes.
 19 Q -- "that replacing the quarter panel will return it to
 20 pre-loss condition."
 21 If I'm reading that correct, at least your memory at
 22 the time when you wrote this note was that if you had
 23 repaired the quarter panel, it would not have returned it
 24 to pre-loss condition, but the fact that you had replaced
 25 it, you believed it was returned to its pre-loss

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1 condition?
 2 A Those were direct comments from the shop that did the
 3 repairs.
 4 Q Okay. And do you believe there's a difference in taking
 5 a quarter panel and repairing it, straightening the metal
 6 and adding Bondo to it, as opposed to replacing it --
 7 MR. BENNETT: Object to form.
 8 Q (By Mr. Nealey) -- as far as diminished value is
 9 concerned?
 10 MR. BENNETT: Object to form.
 11 THE WITNESS: Not if it's done
 12 properly.
 13 Q (By Mr. Nealey) So are you drawing any conclusions about
 14 whether diminished value did or did not happen on this
 15 vehicle because of -- to your own mind, because it was
 16 removed and replaced, the quarter panel, versus repairing
 17 it?
 18 A The panel was replaced with a riveted panel. They
 19 riveted a new panel back on. It was not a invasive
 20 repair.
 21 THE COURT REPORTER: It wasn't a what
 22 kind of repair?
 23 THE WITNESS: I'm sorry. Invasive
 24 repair.
 25 Q (By Mr. Nealey) Okay. And you write, "Also, conflict of

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1 interest as the person that completed the DV report also
 2 owns the shop that completed the repairs."
 3 What's relevant about that?
 4 **A If the shop is stating that they're not able to repair**
 5 **the vehicle back to pre-loss condition, there could be a**
 6 **conflict of interest since they can -- it gives them a**
 7 **reason to not repair the vehicle and to have an issue**
 8 **with it in the future and turn around and sell a report**
 9 **to Ms. Bower stating there is diminished value based on**
 10 **the repairs.**
 11 Q Well, do you believe that's what Mrs. Butler did, was --
 12 said he couldn't repair the vehicle to its pre-loss
 13 condition and then sold her a report based on that?
 14 **A I was informed by the representatives at his shop -- the**
 15 **reference of "Jeff" in here is not Jeff Butler. That's**
 16 **another Jeff at the shop. I don't know his last name.**
 17 Q Okay.
 18 **A And my conversation with Jeff and Zach at the shop is**
 19 **that the vehicle would be returned to pre-loss condition.**
 20 Q Okay. So reference to Jeff is not to Jeff Butler; it's
 21 to some other Jeff?
 22 **A It is a different Jeff who worked in the shop. I don't**
 23 **know if he still works there or not.**
 24 Q Now, was he adjusting the loss on behalf of Mr. Butler's
 25 shop, or what was he? Was he a technician? What?

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1 **A He's an estimator at the shop.**
 2 Q Estimator.
 3 So your memory is that Jeff, an estimator at the
 4 shop, said that if you removed and replaced the quarter
 5 panel with a new part rather than repairing it, that it
 6 would be returned to its pre-loss condition?
 7 **A Jeff was adamant about it.**
 8 Q So why is there a conflict of interest between that and
 9 Mr. Butler saying that the vehicle was not fully restored
 10 to its pre-loss condition?
 11 **A Again, the shop -- Mr. Butler owns the shop where the**
 12 **repairs were done. If something hadn't been done**
 13 **properly, it gives them an opportunity to just state that**
 14 **it's a -- it cannot be done. It's not an independent**
 15 **valuation of the vehicle.**
 16 Q Okay. And then the final ground is that the Audatex DV
 17 report that also shows zero dollars of DV, right?
 18 **A It does say that, yes.**
 19 Q And the Audatex report shows no DV because the Audatex
 20 report always shows no DV in a circumstance where you
 21 have no structural or frame damage, correct?
 22 **A I cannot say off the top of my head.**
 23 Q Okay. I wanted to just ask a couple of questions about
 24 the policy which I gave you and marked as Exhibit --
 25 **A -- 16.**

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1 Q -- 16.
 2 First of all, if you look at Bates No. 8, which is
 3 the numbers in the bottom, this policy contains an
 4 expressed exclusion for diminished value as to
 5 comprehensive and collision coverages, correct?
 6 **A It states that lost does not mean any difference in the**
 7 **market value.**
 8 Q Okay. And it says, "Loss does not mean any difference in
 9 the market value of your insured car immediately prior to
 10 the loss and the market value of your insured car after
 11 repairs from the loss are completed," right?
 12 **A That is correct.**
 13 Q And that's what you understand diminished value to mean?
 14 **A A loss in the market value.**
 15 Q Okay. And if you look at Bates No. 12, at the very
 16 bottom under "D," it indicates a change in the policy to
 17 exclude -- to include language in the limits of liability
 18 clause which allows for the taking of betterment
 19 deductions, correct?
 20 **A I'm sorry. Where are you reading at?**
 21 Q I'm looking at "D" in the bottom right corner on Bates
 22 No. 12.
 23 **A It states that we have the option to.**
 24 Q Okay. Do you take betterment deductions on uninsured
 25 motorist claims?

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1 **A No.**
 2 Q And that's because there's no language allowing
 3 betterment in the UIM section, right?
 4 **A Based on the Washington laws around betterment.**
 5 Q Okay. Okay. What law specifically?
 6 **A That you have to prove that there would be a direct loss**
 7 **in value as a result of a decision that was made**
 8 **replacing the part.**
 9 Q I don't understand.
 10 **A Sorry. You're adding value to the vehicle as a result of**
 11 **replacing a part.**
 12 Q Okay.
 13 **A You have to be able to prove there is an added value.**
 14 Q Okay. Looking at the uninsured motorist provision --
 15 **A What page is that? I'm sorry.**
 16 Q It's Page 23.
 17 **A Thank you.**
 18 Q In looking at the uninsured motorist section of the
 19 policy, the insuring agreement is under "C" -- is that
 20 correct -- Page 24?
 21 **A Insuring agreement is "C."**
 22 Q Yeah, C-1, right?
 23 **A C-1.**
 24 Q Okay. "We will pay compensatory damages an insured
 25 person is legally entitled to recover from the owner or

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1 operator of an uninsured motor vehicle."
 2 What do you understand the term compensatory damages
 3 to mean?
 4 MR. BENNETT: Object to the extent it
 5 calls for a legal conclusion.
 6 Q (By Mr. Nealey) In your role as a manager for American
 7 Family, what have you understood the words "compensatory
 8 damages" to mean?
 9 **A If a customer would like us to review something for**
 10 **reimburse it, then we will review it.**
 11 Q What does compensatory damages mean to you?
 12 **A It could be a variety of things. It could be any sort of**
 13 **reimbursement that they're seeking as a result of the**
 14 **claim.**
 15 Q And one of those could be loss in value, right?
 16 **A It could be. It could be a variety of things.**
 17 Q Okay. So loss in value or diminished value would be one
 18 element that you would see falling within compensatory
 19 damages, right?
 20 **A It could fall under it.**
 21 Q Okay. And then -- then it says, "Property damage caused
 22 by an accident."
 23 Property damage is the trigger for getting coverage
 24 for uninsured motorist PD, right?
 25 **A If they've suffered a loss of -- to their property --**

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1 Q Yeah.
 2 **A -- to utilize UMPD?**
 3 Q Yeah.
 4 **A If there's damage --**
 5 Q Okay.
 6 **A -- and it meets all the other elements of truly being**
 7 **either an uninsured motorist that resulted in it or a hit**
 8 **and run --**
 9 Q Okay.
 10 **A -- whatever the coverage investigation shows.**
 11 Q Okay. Assuming that the coverage investigation shows
 12 that it is an uninsured motorist, property damage is the
 13 trigger that allows you to get coverage for uninsured
 14 motorist property damage, right?
 15 **A You need to suffer an actual loss.**
 16 Q Okay. And so let me give you just an hypothetical, just
 17 hypothetical, and the hypothetical is that you have
 18 somebody who is -- who is driven off the road, okay, her
 19 car is driven off the road into a sandpit, okay, by an
 20 uninsured motorist, and the uninsured motorist who drove
 21 them off the road stops, you get a license number, you
 22 know they have no insurance and your insured's vehicle
 23 isn't damaged, it doesn't have any property damage to it
 24 but it's stuck in the sandpit and the vehicle needs to be
 25 towed out of the sandpit and the towing cost \$500, would

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1 you cover that as an uninsured motorist loss?
 2 MR. BENNETT: Object to form.
 3 THE WITNESS: First, the liability
 4 adjuster would need to determine if a loss occurred, and
 5 they would need to investigate under phantom vehicle
 6 information that's listed previous to that in the policy.
 7 Q (By Mr. Nealey) We don't even have a phantom vehicle.
 8 The driver stops, who drove your insured off the road,
 9 they exchange license numbers and everything and the --
 10 and the person says, "I'm sorry. I don't have
 11 insurance."
 12 Will Pemco -- will American Family -- in a
 13 circumstance where there's no physical damage to the
 14 vehicle, will they pay for towing in that circumstance
 15 under the UIM?
 16 MR. BENNETT: Object to form of the
 17 question.
 18 THE WITNESS: I do not make coverage
 19 decisions around that, on whether or not that would be a
 20 claim. That would be up to the liability adjuster prior
 21 to the claim ever coming up to review.
 22 Q (By Mr. Nealey) Okay. Meaning you'll always get brought
 23 in when there's been a trigger of some damage to the
 24 physical vehicle, right?
 25 **A Damage, correct.**

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1 Q Okay. There's a provision in here under the insuring
 2 agreement that says C-3. I'll read it to you. "If any
 3 suit is brought by you to determine liability or damages,
 4 the owner or operator of the insured motor vehicle must
 5 be made a defendant and you must notify us of the suit."
 6 Do you see that?
 7 **A I do.**
 8 Q Now, obviously, if the suit had been filed against
 9 American Family by your insured, then there would be no
 10 need to notify them of the suit, right?
 11 MR. BENNETT: Object to form; calls
 12 for a legal conclusion.
 13 THE WITNESS: I would need to review
 14 that with our legal department to interpret that.
 15 Q (By Mr. Nealey) Okay. So you don't know what that
 16 provision means?
 17 **A I do not handle lawsuits.**
 18 Q Okay. So put another way, you read those words and --
 19 and you don't know what they mean as far as when those
 20 apply?
 21 **A I know that if we are being sued, we need to be notified**
 22 **of the suit. If the insured is suing us, it will go**
 23 **through our legal department. That does not come through**
 24 **me.**
 25 Q Okay. Then, if you look at Page 5 of the policy, there's

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1 language in here under Page 5 B-E about "give us a
 2 signed, sworn proof of loss within 60 days after we
 3 request it.
 4 What is it -- in your practice as an adjuster, what
 5 does it mean for you to request a signed, sworn proof of
 6 loss? Have you ever done that?
 7 **A I do not handle liability and coverage investigations.**
 8 Q Okay. So you've never asked for -- in handling
 9 first-party comprehensive collision and uninsured
 10 motorist claims, you've never asked for a sign, sworn
 11 proof of loss?
 12 **A Folks that handle the theft vehicles do get documents**
 13 **signed, but that is not the physical damage department.**
 14 **That is casualty.**
 15 Q Okay. So this language then is used for theft losses?
 16 **A It may be.**
 17 Q Okay.
 18 **A I don't know the exclusiveness because that's not part of**
 19 **the policy that I handle.**
 20 Q Okay. Put another way: This provision about signed,
 21 sworn proof of losses has never had any application to
 22 the work you do, handling auto physical damage claims?
 23 **A It has not come up directly. Again, theft vehicles,**
 24 **sometimes we do have to wait for the theft documents to**
 25 **be back before we receive the okay to pay the claim.**

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1 Q Okay. That's because you want to know if the car was
 2 really stolen instead of being parted off to Mexico or
 3 something?
 4 **A That is part of the investigation, the documents they**
 5 **require.**
 6 Q Okay. Then turning to Page 25 of the policy, which is
 7 the last page, there is a provision F-2, arbitration.
 8 Have you heard about or received training on a case
 9 entitled James River versus Washington Department of
 10 Transportation?
 11 **A No.**
 12 Q Have you received any guidance in the last year and a
 13 half or two years on whether the arbitration provision in
 14 your policy is enforceable at this point?
 15 **A No.**
 16 Q Okay. Now, this provision F-2(a) says, "If we and an
 17 insured person do not agree," it says, "then the matter
 18 may be arbitrated."
 19 In your work working with Am Fam, do you treat
 20 arbitration as something that you'll do if both parties
 21 agree, or will American Family, under this language, will
 22 you seek to use arbitration when the other party doesn't
 23 want to arbitrate?
 24 **A From my knowledge, either party can arbitrate.**
 25 Q Have you ever invoked an arbitration proceeding in a

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1 diminished value case?
 2 **A No.**
 3 Q Have you ever invoked arbitration in a -- settling
 4 property damage aspects of any claim?
 5 **A No.**
 6 Q How many claims have you handled in the time that you've
 7 been at American Family?
 8 **A A lot.**
 9 Q Thousands and thousands?
 10 **A Yeah.**
 11 Q Thousands and thousands, right?
 12 **A A lot.**
 13 Q Okay. You've never invoked the arbitration clause to
 14 deal with a dispute about the amount of loss on a claim?
 15 **A No.**
 16 Q So whether it's -- you can or cannot is sort of a
 17 hypothetical matter since, as a matter of practice, you
 18 don't do so?
 19 **A Correct.**
 20 Q Okay. Are you aware of any of your coworkers ever
 21 invoking the arbitration provision?
 22 **A No.**
 23 Q Okay. Let's take a couple-minute break. Let me look at
 24 my notes, and then I may be either done or as close as
 25 possible to being done.

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1 MR. BENNETT: Sure.
 2 (Recess from 2:24 p.m. to 2:34
 3 p.m.)
 4
 5 Q (By Mr. Nealey) I'm just going to ask quickly a couple
 6 of questions.
 7 I know you were not the primary person handling
 8 Bryce Meyer's claims, but I would like to just ask a
 9 couple of things because it will help me as I go through
 10 this. If you don't mind, I'm going to mark this as
 11 Exhibit 19, but I'll come over here because I can
 12 probably move a little more quickly if I just point you
 13 at things.
 14 These are the notes from Mr. Meyer's claims, and I
 15 brought it to ask you about it because your name shows up
 16 in a couple of places, but I recognize you're not the
 17 primary person.
 18 The notes here are from MLF. I take it that that's
 19 Mat Fuqua?
 20 (Exhibit No. 19 marked for
 21 identification.)
 22
 23 THE WITNESS: Matt Fuqua.
 24 Q (By Mr. Nealey) Is he still with the company?
 25 **A Yes.**

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1 Q And is he based here in Seattle, or is he based out of
 2 Phoenix?
 3 **A Our address is Phoenix for all of us. He is here in**
 4 **Seattle.**
 5 Q Okay. Is he a manager like you, or is he a line
 6 adjuster?
 7 **A He's in the certified repair program as a reinspector.**
 8 Q Oh, okay. So he's -- he interacts with CRP shops?
 9 **A That is correct.**
 10 Q Okay. Does he do damage adjusting as well?
 11 **A Sometimes.**
 12 Q Sometimes. Okay.
 13 And -- and does he do diminished value issues as far
 14 as you know?
 15 **A I do not know.**
 16 Q Okay. Okay. And then going through here we have MLB
 17 061.
 18 Do you know who that is?
 19 **A I do not.**
 20 Q Okay.
 21 **A I would have to cover over it.**
 22 Q That's okay.
 23 Okay. BLC 036, do you know who that is?
 24 **A I do not.**
 25 Q Okay. Here's the e-mails that I saw with you.

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1 Jennifer O'Malley, she works for you; is that
 2 correct?
 3 **A Yes, she does.**
 4 Q Okay. And then you're listed as the supervisor
 5 responding to, but that's earlier on the claim, so would
 6 it be fair to say that you would have handled this claim
 7 unless it then got shifted to deal with a designated
 8 repair facility at some point and then it would be
 9 shipped over to Mike Fuqua's department?
 10 **A I would not have handled the claim, per se, but Jennifer**
 11 **would have been involved in the claim --**
 12 Q Okay.
 13 **A -- for the repairs of the vehicle, only.**
 14 Q Who is Tina L. Cook?
 15 **A I don't know.**
 16 Q Okay. Jennifer is your employee. Because she writes and
 17 she says, "I'm looking at the insured vehicle right now.
 18 Insured show me pics of the vehicle pushed into the wall
 19 behind where he parked the insured vehicle for work. If
 20 he didn't have the pic showing pushed into the wall, I
 21 would question it, but with the pics, it will be hard to
 22 argue."
 23 Do you know what she's talking about?
 24 **A I assume that they wanted confirmation that it was a hit**
 25 **and run, based on that statement --**

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1 Q Okay.
 2 **A -- so she forwarded the photos.**
 3 Q So Tina L. Cook, is she in the -- one of these people who
 4 distribute liability?
 5 **A It's Brianna Cook.**
 6 Q Brianna.
 7 **A And yes, she is.**
 8 Q Okay. So she's in the liability department?
 9 **A She's located in Phoenix. I do not know her though.**
 10 Q Okay. So Ms. O'Malley comments then relates to having
 11 seen some proof that it was, in fact, an uninsured
 12 vehicle?
 13 **A Relaying that information to --**
 14 Q Okay. And then right here, you may or may not know, is
 15 the notes from the initial contact from the insureds, and
 16 it says, "Inbound call from insured, Bryce. Claim
 17 acknowledged, gave claim number and confirmed." "Insured
 18 stated vehicle was parked in parking lot unoccupied and
 19 noticed damage to vehicle, no passengers, no injuries."
 20 And then it says, "Repair Options," "Explained collision
 21 coverage and \$500 deductible." "Read CRP" [sic]
 22 "disclaimers stating they had the right to choose a
 23 repair facility."
 24 Do you know what that's referring to?
 25 **A It's a CRP disclaimer.**

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1 Q Yes.
 2 **A That's just letting the customer know they have the right**
 3 **to take the vehicle to any shop of their choice.**
 4 Q Okay. And so that disclosure is read to people when they
 5 call in with a claim?
 6 **A Not always.**
 7 Q Okay. And then it say, "Offered CRP: Accepted."
 8 "Explained all the benefits of CRP."
 9 Is there a -- to your knowledge, is there a script
 10 or something that's used when people call in regarding
 11 the certified repair program?
 12 **A I believe they do use scripts. As far as the extent of**
 13 **it for the CRP, I don't know.**
 14 Q Okay.
 15 **A I know that they provide a disclaimer if they're going to**
 16 **be making an assignment for a vehicle inspection.**
 17 Q Okay.
 18 **A If there's no vehicle inspection, there's no disclaimer.**
 19 Q There's no disclaimer, okay.
 20 Do you know who Angie Zitzelsberger is?
 21 **A No, I do not.**
 22 Q Okay. And Mr. Hilden, does he work with Mr. Fuqua?
 23 **A That is his supervisor.**
 24 Q It's his supervisor. Okay.
 25 Does Mr. Hilden work both with the designated repair

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1 program and adjusters like in your department, or he just
2 works with the certified repair program at this point?

3 **A Mr. Hilden does both.**

4 **Q** Does both. Okay.

5 I think I have no further questions. Thank you very
6 much for your time.

7 **A** Okay. Thank you.

8 (Deposition concluded at 2:40 p.m.)

9 (Signature reserved.)

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1 STATE OF WASHINGTON) I, Laura L. Ohman, CCR, a certified
2) ss court reporter in the State of
3 County of Pierce) Washington, do hereby certify:

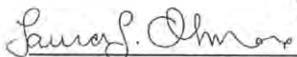
4 That the foregoing deposition of LISA M. MCNALLY
5 was taken before me and completed on September 10th, 2014,
6 and thereafter was transcribed under my direction; that the
7 deposition is a full, true and complete transcript of the
8 testimony of said witness, including all questions, answers,
9 objections, motions and exceptions;

10 That the witness, before examination, was by me
11 duly sworn to testify the truth, the whole truth, and
12 nothing but the truth, and that the witness reserved the
13 right of signature;

14 That I am not a relative, employee, attorney or
15 counsel of any party to this action or relative or employee
16 of any such attorney or counsel and that I am not
17 financially interested in the said action or the outcome
18 thereof;

19 That I am herewith securely sealing the said
20 deposition and promptly delivering the same to
21 Attorney Stephen M. Hansen.

22 IN WITNESS WHEREOF, I have hereunto set my hand
23 and affixed my official seal this 17th day of September,
24 2014.

25 

Laura L. Ohman, CCR
Certified Court Reporter No. 3186



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